# United States Court of Appeals for the Second Circuit



**APPENDIX** 

**ORIGINAL** 

75-7255

United States Court of Appeals FOR THE SECOND CIRCUIT

JOHN THEODORE GILBERT,

Plaintiff-Appellant,

against

AMERICAN EAGLE TANKER CORP.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK

# JOINT APPENDIX

DONALD D. OLMAN Attorney for Plaintiff-Appellant 276 Fifth Avenue New York, New York 10001 (212) 684-5620

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN Attorneys for Defendant-Appellee 96 Fulton Street New York, New York 10038

(212) 253-6171



PAGINATION AS IN ORIGINAL COPY

# INDEX

	Page
Docket Entries	, Al
Complaint	A3
Answer	A33
Order of Metzner, J	A43
Excerpts from Testimony	A49
Decision of Metzner, J	A228
Judgment	A232
Notice of Appeal	A233
INDEX TO WITNESSES	
PLAINTIFF'S:	
PLAINTIFF 5:	
JOHN THEODORE GILBERT	
Direct	. A50
Cross	A74
Redirect	. A90
Rebuttal Direct	. Al69
DEFENDANT'S:	
WILLIAM GEIGER	
Direct	. A101
Cross	. A107

# Index to Witnesses

	Page
DEFENDANT'S (Continued):	
FRANCIS P. POWERS	
Direct	A116
Cross	A133
Redirect	A146
HARRY W. MARSHALL	
Direct	A147
Cross	A163
INDEX TO EXHIBITS	
PLAINTIFF'S:	
1Certificate of Discharge	A188
2Wage Voucher	A189
10Letter Dated September 5, 1972	A190
11Letter Dated August 2, 1973	A201
DEFENDANT'S:	
CVoucher Work Sheet	A202
LLetter Dated April 16, 1973	A203
ELetter Dated May 2, 1973	A204
FLetter Dated July 11, 1973	A205
HDeck Logbook of the S.S. American Eagle for the Period of May 4, 1972 through June 5, 1972	A207

# iii

# Index to Exhibits

	Page
DEFENDANT'S (Continued):	
ITelegram Dated May 18, 1973	A210
MLetter Dated October 3, 1972	A 211
NLetter Dated November 27, 1972	A217



# JOHN THEODORE GILBERT

---- VS.

AMERICAN FAGLE TANKER CORP.

73 W. 2227

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DATE	PROGREDINGS	Date Order &
- May18-7	Filed Complaint. Issued Summons.	\$15.0
Jun18-73		423.00
Jun7-73	Filed summons and entered marshal's return served on American Eagle	
A144	Thinker Corp. by Carrol Tassiello by 5-24-73.	• • • • • • • •
Fy-18=3	Filed ANS WER of deft American Eagle Tanker Corp to the complaint. Filed pltfs. motion for a protective order pur. to Rule ZocFRCP.	HTM
7-17-73	Filed affdvt. of pltff pro-se John Theodore Gilbert in support of pltffs late reply.	
7-23-73	Filed affdvt. of Robert J. Ryniker in opposition to pltffs' motion for a	
7-24-73	protective order. Filed pltffs. affdvt. and notice of motion for an order forcing deft. to	
1000	accept and answer pltff's late reply to deft's answer to complaint.	
NZA	ret. 8-3-73	
7-26-73	Filed memo end. on motion dated 7-1/-/3 for a protective order	
學大文 2	This motion is disposed of in accordance with report	
SCOTT IN THE	of Mag. Jacobs dated July 25,19/3. So ordered, Metzner, J.	
7-26-73	m/n Filed memo endorsed on pltffs motion filed 7.21 222 This mation is a set	
W	Filed memo endorsed on pltffs. motion filed 7-24-73: This motion is marked off the calendar as moot in view of the conference betw. parties and Magistr.	
F357	Jacobs on (-2)-13 - So ordered Metzner. J. (m/n)	
7-26-73	Filed Special Master, s Report by Magistrate Jacobs.	1
	vivin picis, multun fur a protective order is referred	21/2
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	to mag. Jacobs to hear and report his recommendations to	
8-3-73	the Court, So ordered, Metzner, J. (n/m by pro se)	
8-3-73	Filed memorandum of law in oppos. to pltfs. motion under Rule 7. Filed affdt. in opposition to pltfs. motion pur. to rule 7(affdt.	
	of Robert J. Ryniker (atty. for deft.)	11.
Jan-29-74	of Robert J. Ryniker (atty.for deft.). Filed defts. affdvt. and notice of motion to dismiss - ret, 2-20-74	TOTAL ST
Van-29-74 Van-29-74	Filed defts, memorandum of law in support of motion to dismiss,	1
Jan-29-74	Filed defts. interrogs. to pltf.  Filed notice of change of firm name of defendants Attorneys.	11111
Apr-2-74	Filed deft's affect, and notice of motion for an order precluding	
25.5	plaintiff herein to offer evidence or testimony at the time	गत्र गर्भ
39.5.1	of trial ret. 4-30-74 at 4:00 P.M.	4
Apr-2-74		1 17 1
Super 1	4 Filed OPINION #40654The motion to dismiss the first claim is denied. The motion to dismiss the second, third and seventh	1 14 14 14 14
	through sixteenth claims is granted. So ordered Metzner, J.	
May 6-7	The same of the sa	1,84 . 3
1	from offering evidence, etc. at trial, is referred to Magistra	e:
May-17-7	Jacobs to hear and report. So ordered Metzner, J. in/a	
p	re-argument of Court's decision of 4-29-74 is ext. to 5-30-74	
May-10-7	Metzner, J. Filed notice of appearance by plaintiff	
Jun-17-7	Filed memo endorsed on deft's motion filed 4-2-74: Pursuant to	4 34 14
1.'	telephone advise from defendant's Attornou (140 Principles) 10th	15.7
<u> </u>	is marked withdrawn without prejudice. So ordered Market	
1	m/n	

# A 2 Docket Entries

5 D. C. 110 Rev. C	Ivil Docket Continuation
DATE	PROCEEDINGS D
000 00	PRE-TRIAL CONFERENCE HELD BY MO FO ON ON
12C- 3-7	PRE-TRIAL CONFERENCE HELD BY Metros,
lec - 2-74	Tiled plaintiff's answers to interrog,
ec- 5.7/	TOTAL TOTAL Togain before lecener, J. Language Allendar
ec- :- 7/	Trial continued an concluded - Decision reserved. A lawner
5(1	
17:13	Tilled defendant's post criel aparendan
Dec-19-75	"the nia witt's post total desorre un.
03-31-75	Filed optition #42140. Court find o viet. o. &e U.S.C. pain reph (85 and there is
M	in backs for this claim. It find me in the to the payment of \$46.56 for faultr
	inpuncil seeplit tracel time and sub-let tree from Ras Tonurs to sew York. Judine
	she'll be entered accordingly, or or tree, or Meterson, I. m'n
04-03-75	Filed Judgment and order #75,282Ordered that plaintiff John Theodore Gilbert
	have judgment against the deft. Am. Eagle Tanker Corp. in the amount of
	\$46.56 Clerk. m/n
04-24-75	Filed plaintiff's notice of appeal to the USCA for the 2nd Circuit from final
	judgment en ered on 4 3-75 - copy mailed to Hil ivkins Carey Loesberg &
	O'Brien, Esqs.
May 22-	75 Filed letter dated July 11-73 to Metzner, J from Hill Rivkins &
	copy of letter to Mr. Cilbert from defts. atty. dated July 11-73.
- 11 75	Filed Transcript of record of proceedings, dated Dec 5+6 1474
5 20 75	Filed stimulation designating exhibits to be transmitted to the U.S.C.
05-28-7	Filed stipulation designating exhibits to be transmitted to the U.S.C. Filed notice that the original record on appeal has been
	certified and transmitted to the USCA for the Second Circuit.
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A 3

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOHN THEODORE GILBERT,

Plaintiff

Defendant.

-V-

AMERICAN EAGLE TANKER CORP.

COMPLAINT

73 Civ. 2227

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT SECURITY AND PREPAYMENT OF FEES.

THIS IS AN ADMIRALTY OR MARITIME CLAIM WITHIN THE MEANING OF RULE 9(h)

Plaintiff, JOHN THEODORE GILBERT, complaining of the defendant, AMERICAN EAGLE TANKER CORP., respectfully alleges:

# FIRST STATEMENT

- a) This action by plaintiff seaman against owner and operator of vessel is for his alleged wrongful discharge and for the neglect of the master to pay him his earned wages, extra wages, penalties and fines, which were due him at the time of his discharge, plus the statutory double wages accruing after the lapse of the four-day waiting period required, plus subsistence and room allowance starting at the same time double wages go into effect.
- b) The total amount of damages claimed herein are set forth at the end of these pages.

#### SECOND STATEMENT

a) Upon information and belief that at all times hereinafter mentioned the defendant was and still is a domestic

A 4
Complaint

corporation, doing business in the City of New York, State of New York.

- b) Upon information and belief that at all times hereinafter mentioned the defendant owned or leased a vessel known as the S/S American Eagle.
- c) Upon information and belief that at all times hereinafter mentioned the defendant operated said vessel.
- d) Upon information and belief that at all times hereinafter mentioned the defendant was in possession and control of said vessel.
- e) That at all times hereinafter mentioned the plaintiff was employed on said vessel by the defendant as Second
  Assistant Engineer at an agreed rate of wages, together with overtime and maintenance.
- f) That at all times hereinafter mentioned said vessel was an American vessel and the plaintiff became a member of the crew of said vessel.
- g) That at all times before and hereinafter mentioned plaintiff was a native born American citizen and still retains full status as same.

#### THIRD STATEMENT

Plaintiff's name is JOHN THEODORE GILBERT, and his address is 173 East 15th Street, New York, N. Y. 10003.

# FOURTH STATEMENT

Defendant's corporation is entitled AMERICAN EAGLE TANKER CORP., whose address is 80 Broad Street, New York, N. Y. 10004.

# Complaint

#### FIFTH STATEMENT

- a) On December 28, 1971, at MEBA Union Headquarters, 752 Broadway, New York, N. Y. 10003, plaintiff entered the employ of the defendant as "Relief" 2nd A/Engineer on the S/S American Eagle and was flown that evening to the vessel in Ras Tanura, Arabia, arriving at said vessel at approximately 11:30 P.M. on December 29, 1971.
- b) Plaintiff seeks to enforce his rights to collect all of the various penalties, fines, etc., as prescribed for the alleged violation of several sections of the Seamen's Act, which hereinafter follows, plus collect other damages in the way of double wages, subsistence and room allowance, transportation expense, etc., plus collect his "earned wages" of \$5,121.19, the sum of which was due and payable at the time of plaintification discharge in Ras Tanura on May 20, 1972 and which has never been paid to date, as follows:

#### FIRST CAUSE OF ACTION

- 1. On May 20, 1972 plaintiff was wrongfully discharged from the vessel by the master. He demanded of the master to be discharged by the American Consul, and receive one month's extra wages because watches were not equally divided on all week days in port, causing plaintiff to work more hours each day than the other two watchstanding engineers were required to do, plus required to work extra hours beyond eight (8) hours in one day without payment of overtime for same.
- a) Plaintiff required to work three (3) more hours every week day in port than either one of the two other watch-standing engineers, who themselves only were required to work

four (4) hours on each of these days. Plaintiff forced to give twenty-seven (27) hours of overtime he alone worked to these two watchstanding engineers, who did no work at all for same.

- b) Plaintiff required to work one (1) hour in excess of eight (8) on each of these dates: December 30, 1971, February 7, 1972, March 16, 1972 and April 19, 1972 without being paid overtime for same.
- January 20, 1972, while at the same time not being permitted or required to do so, which is in violation of Section 23 of the 1969-1972 MEBA Tanker Vessel Agreement. Plaintiff worked four (4) hours from 4 P.M. to 8 P.M. this day taking vessel out to sea, and only had one hour off duty in the immediate twelve (12) hours prior to 4 P.M. Plaintiff put in for four (4) hours overtime between 4 P.M. and 8 P.M., but same was refused payment by the company and master, and overtime is payable for this particular work, as per MEBA 1969-1972 Tanker Vessels Agreement, Section 23.
- d) A "breach of contract" of the 1969-1972 MEBA

  Tanker Vessels Agreement was in effect at all times (Section 10(c)
  as per Mr. Lamy's letter dated March 13, 1972), in regard to
  items (a) and (b) above, and because of this fact, plaintiff
  should not have been required to work these extra hours and not
  be paid overtime for same.
- e) Plaintiff was "discriminated" against, which is in violation of Section 35 of the 1969-1972 MEBA Tanker Vessels Agreement with regard to items (a) and (b) above.

- f) Had all watches been "equally divided" in port, as is required by Title 46 U.S.C. Section 673, there would have been no violation with regard to Item (a).
- g) Claiming one month's extra was a for violation of 46 U.S.C. Section 673, because not only entitled to discharge and all earned wages on May 20, 1972, but one month's extra wages under the provisions of 46 U.S.C. Section 685. Therefore, plaintiff claims as damage for this violation the sum of one month's extra wages One Thousand Ninety-six Dollars and Ninety-four Cents (\$1,096.94).

#### SECOND CAUSE OF ACTION

- 2. Plaintiff was discriminated against when he was aboard the S/S American Eagle, some of which not only curtailed his welfare, but more important did endanger his health and safety. Violation of Section 35, No Discrimination MEBA Agreement.
- a) Violation of Section 2, Paragraph (1), page 13 of 1969-1972 MEBA Tanker Vessels Agreement In that plaintiff was required to work more hours on watch every week day in port than either one of the other two watchstanders, and as a result of this, suffered not only considerable mental anguish, but did experience physical harm as well, which was why I had a "G.I." series of X-rays taken soon after I left the vessel on May 20, 1972. I had experienced blood in the stools for several days prior to my leaving the vessel, and this was due, as when this had happened to me before, to not enough rest and severe mental anguish. Not only was my health and safety jeopardized while I was aboard the S/S. American Eagle, but my life as well, and I have hospital records to prove this fact. These facts were explained to the chief engineer and other engineers aboard this vessel, but they ignored everyting I told them.

- b) Violation of Section 10, Paragraph (a), (b) and (c), pages 27 and 28 of 1969-1972 Tanker Vessels Agreement In that I was required to work in excess of eight (8) hours on the day watch in port on all days I had the "day watch", while at the same time all the rest of the engineers aboard the vessel violated Section 10, Paragraph (c), as the rest of the engineers all received considerable "time off" in port, whereas I was required to keep working full sea watches at all times, in port and at sea, while the other two watchstanders had their watches "broken" in port and they each worked only four (4) hours each day in port, except on their "day watch".
- c) Because of the facts as indicated in Paragraph

  (b) above, my "time off" in port was seriously broken up, while
  the other engineers only worked one watch a day of only four (4)
  hours, and the 1st A/Engineer not at all for every three (3)
  out of four (4) days in port (except on Saturday, Sunday and
  Holidays). The plaintiff was never allowed said benefits,
  which fact not only jeopardized his health, but did put his
  life in danger.
- d) Violation of Section 17, Confinement to Vessel,
  page 41 MEBA 1969-1972 Tanker Vessels Agreement. Because all
  watches in port were not "equally divided", said fact caused me
  to work three (3) more hours on all week days in port than
  either one of the other two watchstanders were ever required.

  Not only was I required to give two hours of my overtime on each
  of these days I worked in port of said three (3) hours I was
  required to work, above and beyond either one of the other two
  watstanders, but in relationship between myself and the other
  two watchstanders I was "confined to the vessel" for these three (1)

# Complaint

extra hours I worked each day, within the meaning of Section 17 of the 1969-1972 MEBA Tanker Vessels Agreement, because while I worked these extra three (3) hours, the other two watchstanders were either asleep or ashore, yet I was forced to give these men two of my three hours overtime. I was deried three (3) hours of shore leave each day in port, because I had to work, while other engineers were ashore or asleep. I did not put overtime down for this violation, however, still I was ostracized aboard the vessel because I attempted to rectify matters aboard same.

e) Violation <u>Section 19</u>, Overtime, Penalty and Premium Rate, Paragraph (a).

Since I worked seven (7) hours a day in port, plus sixteen (16) hours every fourth day on the "day watch", I did not start receiving the regular overtime rate for me of \$9.49 per hour until I worked at least eight (8) or more hours in one day, while each of the other two watchstanders received the full overtime rate, which for them was \$8.25 per hour for every hour the, worked in port in excess of four (4) hours per day. This is another case of "Discrimination".

f) Violation of Section 42, Privileges - 1969-1972
Tanker Vessels Agreement.

Plaintiff was discriminated in that he was not given the same privileges as the mates on this vessel, and that was to have the engineers "rotate" all night watches in port to make said watches as "equally divided" as possible.

g) For all of these causes of Discrimination against me as listed herein, I am claiming another "one month's extra

# Complaint

wages" for the "cruel treatment" all of this consisted of towards me, which is also in violation of 46 U.S.C. Section 685, "Justifiable Complaint" of seamen - damages being another month's wages of One Thousand Ninety-six Dollars and Ninety-four Cents (\$1,096.94).

#### THIRD CAUSE OF ACTION

- 3. Plaintiff was forced off the vessel in a foreign port, said port being Ras Tanura, Arabia on May 20, 1972. This is in violation of Title 18 U.S.C. 2195 "Abandonment of Sailors", and is either a "Civil" or "Criminal" action, depending upon the severeness of the matter in either action it calls for "one month's extra wages".
- a) Plaintiff demanded all of his earned wages from master, plus "one month's extra wages", on May 20, 1972, but master refused same.
- b) Plaintiff then demanded one-half (1/2) of the balance of all of his earned wages due on May 20, 1972, plus "one month's extra wages" and master refused this demand.
- c) Plaintiff then demanded one-third (1/3) of the balance of his earned wages due on May 20, 1972, plus "one month's extra wages" and master refused this demand.
- d) Plaintiff then demanded to be discharged by the American Consul in Ras Tanura, but master refused saying "There is no American Consul here in Ras Tanura", however, I found out a few months <u>later</u> that there is and always has been an American Consul in Dhahran, which is only a half hours auto ride from Ras Tanura.

- e) I took the master's word for it, that "there was no American Consul in Ras Tanura", and I then demanded to take the vessel to Bahrain, as Bahrain is only about 50 miles by sea, and about a four hour cruise for this vessel from Ras Tanura. The master refused my demand.
- discharge a seaman in a foreigh port without the sanctions of the American Consul, and if there is no American Consul in the particular port the vessel happens to be in, then the master should take said seaman to the next port, and especially so if the seaman as a "justifiable complaint" to make to said Consul as I have, more or less". The master then ordered me to sign off the ships articles, etc., and get off the vessel or he would have the shore authorities come aboard the vessel and take me ashore to jail".
- g) I took the master's word for it that "there was no American Consul in Ras Tanura", as I did not want to "take the chance" of being thrown in jail in a country where no American Consul is a ailable to get me out, as I could be left in jail for several months, or even years, without anyone ever knowing where I was.
- h) Plaintiff then signed off the ship's articles
  "UNDER PROTEST" for all of the reasons described herein from
  (a) to (g), but refused to sign his "Wage Voucher". because
  now knowing the vicious nature of the master, I took no chances
  of signing said paper, because I feared that said master would
  then say later that "I gave the plaintiff his earned wages in
  full on May 20, 1972, and he signed his wage voucher, which
  proves this fact". However, said plaintiff wasn't born yesterday.

- i) Plaintiff left vessel under master's orders, with a "short advance" in his pocket at about 11 P.M. on May 20, 1972, and noticed that vessel was due to sail for Bahrain at 2 A.M. on May 21, 1972, which was only three (3) hours away in time.
- j) Plaintiff left dock area alongside vessel from "guard house" with agent at 12 midnight and head for "Agent's Office" inland, and learned that his "relief", 2nd Assistant Engineer Butler would not be in port until around noon of May 21, 1972, because the next plane did not arrive at Dhahran airport until around 10 A.M. the next morning, so the vessel should have been sitting up at the dock in Bahrain long before Butler ever arrived at Dhahran airport.
- k) All of this contradicts Captain Marshall's allegations about when Butler arrived, etc.
- 1) At the very least, there is a "Civil" violation of 18 U.S.C. Section 2195 here, because even my mail was willfully and maliciously denied me in Ras Tanura on May 20, 1972.
- m) According to my estimation a "Civil" violation of 18 U.S.C. Section 2195 compares to a seaman's right to be discharged by an American Consular Officer under 46 U.S.C. Section 682 at said seaman's command, and to be paid all of his wages due and any extra wages, if it appears to said Consular Officer that said seaman has completed his contract and did not sign off the vessel under "mutual" consent, plus had a "justifiable complaint" to make to said American Consul said seaman is entitled to "one month's extra wages" under the provisions of 46 U.S.C. Section 685, which goes with 46 U.S.C. Section 683.

n) Therefore, in my case I was "forced off the vessel under threat of being jailed if I refused to leave said vessel" by the master. I signed off ship's articles "UNDER PROTEST" because of the refusal of my "lawful demands" and I had a "justifiable complaint" (several, in fact) therefore I feel that I should be allowed damages of another "one month's extra wages" in damages for this violation of One Thousand Ninety-six Dollars and Ninety-four Cents (\$1,096.94).

#### FOURTH CAUSE OF ACTION

A. Because I already have three "Causes of Action" herein, each one calling for reasonable transportation home, whenever a seaman is discharged in a foreign port with a "justifiable complaint", plus "signed off the articles UNDER PROTEST", because he was not allowed to be discharged by an American Consular Officer and be paid all his monies due at the time of his discharge - I therefore am demanding the "difference in extrapline fare of One Hundred Seventy-two Dollars and Forty Cents (\$172.40), which I had to pay out of my own pocket to get back to New York from Ras Tanura by way of Tokyo.

a)	First Class plane ticket Dhahran		
	to Wark by way of Tokyo	\$1,	494.90
b)	First Class Plane ticket to New		
	York by way of Paris		826.00
c)	Difference in plane fare two different directions	s	688.90
	differenc directions	Y	000.50

d) I paid \$172.40 out of my own pocket to get back to New York by way of Tokyo, and because of the arbitrary manner I was discharged from the vessel, plus I have transportation coming to me on three different counts, I am therefore demanding damages in collecting the sum I had to pay for Second Class plane fare from Dhahran to New York by way of ... yo in the amount of \$172.40.

#### FIFTH CAUSE OF ACTION

Plaintiff refers to hospital bill for "G.I." series of X-rays taken of the abdominal area a few days after I was wrongfully discharged from the vessel. The reason for said X-rays was due to the fact that I had signs of blood in the stools for several days just prior to my getting off the vessel on May 20, 1972, and I was worried about same as I have come close to death twice already from this very occurrence. I had been on this vessel for almost five months, and the "MEBA Health and Welfare Plan", plus the "Public Health Service" take care of a seaman in these cases. I requested the 24,600 Yen I paid the Bluff Hospital in Yokohama for said X-rays, etc., from the agent in Yokohama, but the agent said "Main office in New York refuses to pay". I am now demanding damages in the sum of Ninety Dollars and Forty-six the dollar.) Said "certified" Bluff Hospital receipt on hand -\$90.46.

#### SIXTH CAUSE OF ACTION

- Overtime Wages, which were due and payable on May
   1972.
- a) MEBA Patrolman, Mr. Colon checked all of my overtime over, when I arrived in New York and found that I have \$641.05 in overtime due me.
- b) Mr. Colon and myself went down to AMERICAN EAGLE TANKER CORP. to get same, but the company refused to pay even one sixth (1/6) of this overtime.
- c) My letters which I sent to MEBA about this overtime, etc. were never answered at all by the company, while I was about the vessel.

- d) After my visit with said company, I answered "two letters of rebuttal" from the company and finally I gave up, and now will thrash this out in the Court.
- e) I am not only demanding the Six Hundred Forty-one Dollars and Five Cents (\$641.05) Mr. Colon had in his letter to Mr. Marshall of September 5, 1972, but I am adding to the fact that the company owes me more than Six Hundred Forty-one Dollars and Five Cents (\$641.05). I should be paid one hour overtime for each hour I worked during 1200-1300 on December 31, 1971, February 7, 1972, March 16, 1972 and April 19, 1972, a sum of Thirty Seven Dollars and Ninety-six Cents (\$37.96). However I now let Mr. Colon's figure of Six Hundred Forty-one Dollars and Five Cents (\$641.05) stand as it is, and I therefore demand this additional sum of overtime as damages in the amount of Six Hundred Forty-one Dollars and Five Cents (\$641.05).

#### SEVENTH CAUSE OF ACTION

- 7. Every master shall, not less than 48 hours before paying off or discharging any seaman, deliver to him a full account of his wages, etc., and in default shall, for each offense be liable to a penalty of not more than \$50.
- a) According to <u>Section 7, Wages</u> of 1969-1972 MEBA Tanker Vessels "all pay vouchers must be legible and contain the ship's name, the Company's name and the date."
- b) I was given a "piece of scratch paper", not a "Pay Voucher", less than 48 hours before I was first told to "get off the ship". This is a direct Violation of 46 U.S.C. Section 642, and calls for a \$50 penalty.

- c) This "Voucher Worksheet", which is <u>barely</u> legible <u>does not</u> contain the <u>ship's</u> name, the <u>Company</u> name, or the <u>date</u>, therefore same is "illegal" according to MEBA Rules, and also according to 46 U.S.C. Section 642.
- d) I was actually given a "Wage Voucher" at 5:30 A.M. on the morning of May 20, 1972, and was told then by the master that "I was to get off the vessel at 12 noon".
- e) Demanding the statutory \$50 penalty for violation of 46 U.S.C. Section 642.

EIGHTH CAUSE OF ACTION

41 050 SEC 670

The "Slop Chest" aboard the vessel was not provided

as required with a complement of clothing sufficient for all seamen aboard the vessel, as all vessels plying the foreign trades outside the United States must adhere to.

- a) I wear a size 10-1/2 work shoe, but could not buy either a work or dress shoe of a size 10-1/2, 11 or 11-1/2 in said "Slop Chest", and same was an "emergency" as I had been working in oil and my "old" work shoes gave out on me, so I had to drive nails into same to keep the soles on the shoes.
- b) Inasmuch as I <u>could not</u> get enough time off aboard said vessel to stay ashore, when I did get a chance in Bahrain to find "and or" a pair of shoes that fit me ashore, I had to "go without" said work shoes and kept my old ones together for the next two months by continual repairs.
- c) This again was the fault of my having to work day and night "at sea" and "in port", plus required to work additional overtime, which fact caused me to be unable to go ashore at all

most of the time, and when I could, it was only for an hour or two in most cases.

- d) By being <u>forced</u> to have to drive nails into my soles to keep them from falling off my shoes, a <u>spark could</u> ignite fuel vapor and blow the ship us, as we were carrying extremely volatile cargo on board such as "JP-4".
- e) I had to run into the "After Pump Room" with my "nailed on" soles in Bahrain, when an oil line sprung a leak and was flooding said pump room, and my shoes could have blown the ship up!
- f) Not only was the vessel short of supply on work shoes, but said "Slop Chest" also sold stale cigarettes, the same of which were so old that they did not have the caption on the package "Warning" The Surgeon General has Determined That Cigarette Smoking Is Dangerous to Your Health". This fact is a direct violation of the laws of the United States that were put out to "preserve the health and welfare" of the American public in general.
- g) Said "Slop Chest" had no pipes, pipe tobacco, etc. of any kind.
- 4605C (70 h) I am therefore demanding damages in the sum of the Five Hundred Dollar (\$500.00) penalty, which is provided for "not having a properly equipped Slop Chest" \$500.00

#### NINTH CAUSE OF ACTION

9. I first boarded the S/S American Eagle around 11:30 P.M. on the evening of December 29, 1971. Although there is an American Consul in Dhahran, Saudi Arabia, which is only a half hour's

# Complaint

ride by auto from Ras Tanura, neither myself and three other seamen who came from New York with me (four of us in all) were taken to the American Consul's office in Dhahran to "sign the ship's articles", nor was any attempt made to "have the Consul in Dhahran come to the vessel in Ras Tanura to "sign on the articles" for the four of us seamen, as is required under the provisions of 46 U.S.C. Section 570 "Shipment in foreign ports before Consuls".

a) I am demanding the "penalty" of \$100 for this violation, as per the provisions of 46 U.S.C. 571, R.S. Section 4517.

## TENTH CAUSE OF ACTION

The master of every vessel bound on a foreign voyage, shall on his return to the United States produce to the first boarding officer, whose duty is to examine the men on such list and report same to the collector. If there is any discrepancy of said crew list at the port of arrival, as compared to the port of departure where the vessel originally left the States, it is the duly of the collector at the port of arrival to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each such failure to produce any person on the certified copy of the list of the crew, the master and owner shall be severally liable to a penalty of Four Hundred Dollars (\$400.00), but such penalties shall not be incurred if any person is not on the crew list who were discharged in a foreign country with the consent of the Consul or Vice-Consul there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, etc. 46 USC 677

- a) In my case I was not discharged in Ras Tanura, a foreign port, with the consent of the American Consul there, and it matters not whether I was on the crew list, or not, when the vessel left the States, as I am supposed to be discharged by the American Consul when I demand same, and to give persons the right to demand to be discharged by the American Consul who were on the crew list when the vessel originally left the States, and deny all other persons the right to receive the sanctions of the Consul who were not on said crew list when it left the States, but who were discharged before vessel got back to the States is Discrimination of the worst sort, as this makes a "two pot system" of American justice.
- b) I therefore claim damages for the violation of 46 U.S.C. 677 "Production of crew list on return from foreign voyage; production of seamen listed" said penalty being for the sum of Four Hundred Dollars (\$400.00).

#### ELEVENTH CAUSE OF ACTION

- It was carried out to sea, as one of the crew on board the vessel without entering into an agreement with the master of same, in the form and manner, and at the place and times in such cases required.
- a) I was aboard the S/S American Eagle all day on December 30, 1971, and although there was an American Consul ashore near Ras Tanura, he was not called to the vessel to "sign on" four men, and these four men did not enter into an agreement with the master of the vessel in the proper place, and at the proper time until the vessel arrived in Japan 18 days later.
- b) I am claiming damages in the penalty provided for "Shipping without Agreement" - said "penalty" being for the sum of \$200.

## TWELFTH CAUSE OF ACTION

- 12. Although I had several "justifiable complaints" to see the American Consul about on May 20, 1972, which was the day that I was "wrongfully" discharged from the S/S American Eagle while the vessel was in Ras Tanura, I was willfully and knowingly denied all access to the American Consul either in Ras Tanura or Bahrain.
- refused my lawful demand, to let me apply with the American Consul in Ras Tanura, or let me take the vessel to Bahrain where I could apply to the American Consular Officer there for my discharge, said master is then guilty of violating the provisions of the law relating to the discharge of seamen in a foreign country in either or both Ras Tanura, Arabia and/or Bahrain, and the Consul should not have given said master his ship's papers back in my case, because said master's willful negligence, and the Consul should have collected the \$500.00 penalty in his own name for the benefit of the United States. 46 05C 35H Deposit of ships fixers With Consul
- b) This penalty is for the United States, not for a seaman.
- THIRTEENTH CAUSE OF ACTION

  22 VSC 1199 NEGLECT OF OUT/ OF COMMIT

  13. Captain Powers willfully taking over the duties of
  the American Consul in the discharging of seamen in foreign ports.
- a) Captain Powers did not want me to see the American
   Consul in either Ras Tanura or Dhahran, Arabia or in Bahrain.
- b) One of his reasons was no doubt to keep me from getting the answer to my mail if he let me take the vessel to Bahrain for various reasons.

- c) One seaman who was also discharged off the vessel

  15 days after I was, and who also was denied access to the American

  Consul in Sattahip, Thialand, told me that several other seamen

  were discharged by the master along with himself, and two of

  these men were the two watchstanding three A/Engineers who

  were aboard the S/S American Eagle at all times when I was aboard

  same.
- d) All of these men discharged by the master in Sattahip demanded to be discharged by the American Consul from Bangkok, and all were denied their lawful rights, as I was denied mine.
- e) Master told the seamen before he discharged them in Sattahip, that "he called the American Consul in Thialand (Bangkok)" and that said Consul told him "to pay off the men yourself".
- f) These men all received "Pay Vouchers" like I did, whether they wanted them, or not.
- g) One of these seamen, Augustus J. Rayman, and the two Third A/Engineers saw the American Consul in Bangkok and were told by him that "Captain Powers, nor any other master of any American flag vessel called him on the telephone to come to Sattahip to discharge any seamen".
- h) It therefore is apparent that Captain Powers has taken the law into his own hands, regarding especially the discharging of seamen from the vessel in his command.
- i) All of these seamen discharged by the master in Sattahip had a hard time receiving their money from the "Wage Voucher" the master gave them; some of the men did not receive

their earned wages from same for several weeks after they left the vessel.

- j) I hold all of this as a serious infraction of the law governing the discharge of seamen in a foreign port, and demand said practice to be stopped, and especially at all times any seaman has a "justifiable complaint" to make to an American Consular Officer in a foreign port.
- k) One of the main jobs of Consular Officers in foreign ports is to listen to complaints of not only masters of vessels, but also seamen, and to both "discharge" and "sign on" said seamen (witness same).
- I am calling for a full investigation as to just why the S/S American Eagle is allowed to take over the duties of the American Consul, without any authority whatsoever in doing so.
- m) I am therefore, as of now, requesting the court to "press charges in my behalf" in putting an end to the master of the S/S American Eagle discharging men, whether or not they demand to be discharged by said American Consul.
- n) Because Captain Powers discharges seamen at will, I now ask this court to impose the same fine as that which is imposed upon all American Consular Officers when they also neglect their duty in the discharging of seamen.
- o) I therefore request of the court that it impose
  the statutory fine for the willful violation of Title 22 U.S.C.
  Section 1199 "Neglect of Duty by Consul", because if an American
  Consular Officer had discharged me with a "justifiable complaint",

and refused to collect from the master of the vessel the necessary fines, penalties, etc., at the time said Consular Officer discharged me, then said Officer would have been guilty of willful malfeasance, and/or abuse of power and corrupt conduct in his office, and he would then be subject to the Ten Thousand Dollar (\$10,000.00) fine imposed for this violation.

p) I therefore request the Ten Thousand Dollar (\$10,000.00) fine be imposed against Captain Powers for violation of Title 22 U.S.C. Section 1199, "Neglect of Duty by Consul", because of his willful discharge of me in Ras Tanura, Arabia, when at the same time I had a "justifiable complaint" to make to the American Consul, and had demanded of Captain Powers that he "go with me to the Consul" so said Consular Officer would arbitrate the matter, and come to a final decision on same. I therefore request this statutory fine be imposed of Ten Thousand Dollars (\$10,000.00).

# FOURTEENTH CAUSE OF ACTION

- 14. Plaintiff was issued a "Certificate of Discharge to Merchant Seaman" by the master of the S/S American Eagle on May 20, 1972, while the vessel lay at the loading dock in the port of Ras Tanura, Arabia.
- a) This "Certificate of Discharge" is a United States Government Document.
- b) The master of the vessel, Captain lowers, had no right to make this document out in the first place, as it is "illegal" for a master to discharge a seaman in a foreign port when an American Consular Officer is stationed nearby, and has jurisdiction over the area where this vessel was docked.

- c) The master, Captain Powers, knowingly and willfully made out plaintiff's "Certificate of Discharge" and forced
  plaintiff to accept same, while all the while plaintiff adamantly
  demanded to see and be discharged, and to receive the sanctions
  of the American Consular Officer who was in Dhahran, Saudi
  Arabia, which is only about 25 miles from the port of Ras Tanura,
  and said American Consul in Dhahran does have jurisdiction over
  the area of Ras Tanura, and his authority extends to disputes
  between the master and crew members of all United States flag
  vessels.
- d) Plaintiff demanded that Captain Powers take him to the port of Bahrain so he could see the American Consul there and be discharged by said Consul, and receive the sanctions of same. Moster refused to let plaintiff take vessel to Bahrain, which is only about 50 miles from Ras Tanura, and about a four hour run for this vessel.
- e) Plaintiff given official "Certificate of Discharge to Merchant Seaman", upon which he knowingly and willfully stated on same "Man completed vacation relief, and no U.S. Consul available, so paid off by Master". This statement is FALSE there is an American Consul available.
- f) Master did not "pay off" plaintiff. Plaintiff had a "justifiable complaint" to make to the American Consul, which called for at least "one month's extra wages", in addition to his "earned wages". Plaintiff was not even paid the one-third (1/3) part of the wages due and payable to him under the provisions of 46 U.S.C. Section 596, nor was he paid the one-half (1/2) part of the wages due and payable to him under the provisions of 46 U.S.C. Section 597.

- g) Because plaintiff did complete his contract, he was entitled to <u>all</u> of his "earned wages" upon discharge, not just a part of same. Plaintiff also had "justifiable complaints" to make to the American Consul, and this also is <u>another</u> reason for paying a seaman <u>all</u> of his "earned wages" due at time of discharge, which is in addition to completion of contract.
- h) Plaintiff had demanded all of his earned wages due on May 20, 1972, but master refused to pay same, but was given a "Pay Voucher" by master instead.
- i) Plaintiff does not have to accept a "Pay Voucher", and plaintiff refused to sign same at master's demand, because master did not pay plaintiff all of his earned wages he "lawfully" had coming to him.
- j) There not only is an American Consul who has jurisdiction over Ras Tanura, but there is an American Consul in Bahrain, too.
- k) The "Certificate of Discharge" given to plaintiff
  by Captain Powers not only was issued illegally, but it was
  also issued by master with his knowingly and willfully concealing
  the fact to plaintiff that there was no American Consul in Ras
  Tanura and he stated so on said "Certificate of Discharge".
  This was done to keep plaintiff from seeing the American Consul
  and receive the sanctions of said Consul, which included plaintiff's "earned wages" and 'extra wages" due and payable on May
  20, 1972.
- 1) The "Certificate of Discharge to Merchant Seaman" was fraudulent for the reasons stated herein and this constitutes a "violation of Title 18 U.S.C. Section 1001".

- m) Plaintiff demands that said master, Captain Powers, be fined the sum of Ten Thousand Dollars (\$10,000.00), or any part thereof, for the master's violation of 18 U.S.C. Section 1001.
- n) Plaintiff signed off ship's articles "UNDER PROTEST" because "refused access to American Consul".

#### FIFTEENTH CAUSE OF ACTION

- 15. Plaintiff was not paid all of his "earned wages", which were due and payable on May 20, 1972, plaintiff's "unsigned" Pay Voucher shows that he is still owed Five Thousand One Hundred Two ty-seven Dollars and Nineteen Cents (\$5,127.19), the sum of which has not been paid to him, or any part thereof until chis very date in May of 1973.
- a) The company, AMERICAN EAGLE TANKER CORP. issued plaintiff a "Withholding Tax Statement" in 1973, which states upon same that he was paid all of his earned wages for services he performed on the S/S American Eagle between December 28, 1971 and May 20, 1972. This "A thholding Tax Statement" was issued to plaintiff by the company, who knowingly and willfully knew that plaintiff is d not yet collected all of his earned wages which were due to him on May 20, 1972, said earned wages due being in the amount of Five Thousand One Hundred Twenty-one Dollars and Nineteen Cents (\$5,121.19).
- b) This "Withholding Tax Statement" issued to plaintiff is fraudulent, and was issued to plaintiff to try to get out of paying said plaintiff even the Five Thousand One Hundred Twenty-one Dollars and Nineteen Cents (\$5,121.19) in "earned wages" he had coming to him on May 20, 1972.

c) This fraudulent "Withholding Tax Statement" issued to plaintiff constitutes a "violation of the Internal Revenue Code, Section 6674" (Fraudulent statement or failure to furnish statement to employee).

Plaintiff demands the "penal f" for the issuance to him of said fraudulent Withholding Tax Statement, said "penalty" being in the sum of Fifty Dollars (\$50.00).

d) This fraudulent "Withholding Tax Statement" also constitutes a violation of the Internal Revenue Code, Section 7204 (Fraudulent statement as failure to make statement to employees). Plaintiff rests on the Court's decision on this.

#### SIXTEENTH CAUSE OF ACTION

- 16. Plaintiff has evidence that several people sent him mail, which should have been in Bahrain on May 20, 1972, because it was not in Ras Tanura at this time.
- a) Plaintiff asked Captain Powers to have his mail sent to him in Ras Tanura from Bahrain on the morning of May 20, 1972, but Captain Powers willfully refused to act on plaintiff's demand.
- b) Around 2 P.M. in the afternoon, plaintiff again demanded of the master to try and get him his mail, which must be in Bahrain, or let him take the vessel to Bahrain, so he could not only receive his mail, but also see the American Consulthere. Again the master refused.
- c) Plaintiff then told master that "if I can't take the ship to Bahrain to get my mail and see the American Consul, then I am staving aboard this vessel and ride with it to Bahrain, as I have a legal right to be taken to the next port to see the

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# Complaint

American Consul and receive his sanctions concerning my
"justifiable complaint". To this the master told plaintiff that
"if you are not off of this vessel by the time we are ready to
leave for Bahrain, I'll have the shore authorities come aboard
and take you off, plus have them jail you ashore".

- d) Plaintiff finally gave up trying to argue any more with the master about his mail, or to see the American Consul, as master appeared to mean what he said "about having him jailed ashore" if he did not leave the vessel before same was due to leave for Bahrain.
- e) Plaintiff's relief was not yet aboard vessel by 11 P.M. on May 20, 1972, so vessel would leave Ras Tanura purposely, without a Second A/Engineer. Plaintiff found out from agent ashore early in the morning of May 21, 1972 that "Your relief, Butler will not be here until around noon today (May 21, 1972), as they had trouble with his plane".
- f) S/S. American Eagle was scheduled to leave Ras
  Tanura for Bahrain at 2 A.M. on May 21, 1972, and Butler would
  not be there at this time and master knew this fact also.
- g) Inasmuch as I have witnesses who admit they sent me mail, all of which I should have received on May 20, 1972 and which I have never received to date, one of whom kept a copy of the letter he sent to me, and who also sent me a photocopy of this letter less than one month after I was forced off of this vessel on May 20, 1972. This fact shows beyond a reasonable doubt that I did have at least one letter waiting for me in Bahrain on May 20, 1972.

- h) Master completely refused to comply with my demand in that he made no attempt whatsoever of even trying to get my mail to me from Bahrain to Ras Tanura, nor would he let me take the ship to Bahrain so I could pick up my mail there myself, and I had some very important mail due me at this time.
- i) Any person who knowingly and willfully obstructs the passage of the mail is in violation of the law, and it makes no difference whether said mail which is knowingly and willfully being obstructed or retarded is under the jurisdiction of the United States Postal Service at the time this happens, or not.
- j) I am therefore charging Captain Powers with the violation of Title 18 U.S.C. Section 1701, pertaining to the "Postal Laws" of the United States, because he failed to make any attempt in trying to get me my mail upon my demand of him to do so for me, nor would be let me take the vessel to Bahrain where my mail was, or should have been. The master is the only one who could do this for me, because he is in command of the vessel.
- to the maximum fine of One Hundred Dollars (\$100.00), which is the "penalty" prescribed for the violation of 18 U.S.C. Section 1701. Obstruction of mails generally

#### SEVENTEENTH CAUSE OF ACTION

I am demanding my "earned wages" of Five Thousand One Hundred Twenty-One Dollars and Nineteen Cents (\$5,121.19), which was due me on May 20, 1972, and which I have not yet been paid as of this date of May 16, 1973. I am also demanding my "vacation

pay" that I have coming on these "earned wages", said "vacation pay" being for my period of employment from and including December 28, 1971 to and including May 20, 1972 (4 months, 23 days) said vacation pay for this period being 1/2 day's pay for each day worked, or \$36.565 per day for 123 days, which equals Four Thousand Four Hundred Ninety Seven Dollars and Forty-nine and one-half cents (\$4,497.495) divided in half equaling Two Thousand Two Hundred Forty Eight Dollars and Seventy-five Cents (\$2,248.75).

Total "earned wages" plus "vacation pay" due equals

Seven Thousand Three Hundred Sixty Nine Dollars and Ninety-four

Cents (\$7,369.94). (\$5,121.19 + \$2,248.75 = \$7,369.94)

#### EIGHTEENT CAUSE OF ACTION

18. I am also demanding as damages "double wages" due under the provisions of 46 U.S.C. Section 596, R.S. 4529 - from May 25, 1972 to May 16, 1973, or until such time as the Company shall pay me same, said sum totaling Sixty Thousand Four Hundred Twenty-eight Dollars and Thirty-four Cents (\$60,428.34). My figures on how I arrived at this sum of \$60,428.34 are as follows:

2nd A/Engineer - Tanker Vessels - Power Tonnage 25,001 to 38,000 according to MEBA District No. 1 - Pacific Coast District - Tanker Vessels Agreement 1969-1972 and 1972-1973

Wages 5/25/27-6/15/72 - \$1,096.94 mo.; \$1,096.94/30 = \$36.565 da. 6/16/72-6/15/72 \$1,162.76 mo.; \$1,162.76/30 - 38.759 da.

Vacation Pay-5/25/72-6/15/72-(15 da.per mo.);15/30 x \$36,565= 18.283 da. 6/16/72-6/15/73-(16 da.per mo.);16/30 x 38.759= 20.671 da.

Pension & Welfare 6/16/72 to 6/15/73 = 15.97 da.

Subsistence & Room Allowance 5/25/72 to 6/15/73 = 21.00 da.

# A 31

## Complaint

Wages due 5/25/72 to 6/15/7 " " 6/16/72 to 5/16/7	2 (22 da. x\$36.565 2 (335 da.x 38.759	da.) \$ 304.43 da.) 12,984.27
Vacation Pay due 5/25/72 to 6/15/7 6/16/72 to 5/16/7	72 (22 da. x 18.283 73 (335 da.x 20.671	da.) 402.23 da.) 6,924.79
Pension and Welfare Dues 6/16/72 to 5/16/7	73 (335 da. x 15.97	da5,349.95
Total wages Due	- 5/25/72 to 5/16/7	\$26,465.67
Double Wages due (as per 4) 5/25/72 to 5/16/	5 U.S.C. Section 59 73 (2 x \$26,465.67)	52,931.34
Plus Subsistence & Room Al 5/25/72 to 5/16/	lowance 73 (357 da. @ \$21 p	er da.) 7,497.00
Total Double Wag Room Allowance 5	es, <u>plus</u> Subsistenc /25/72 to 5/16/73	\$60,428.34
NINETEENTH	CAUSE OF ACTION	
19. Totals of all damages	I am claining up t	o May 16, 1973,
as follows:		
1. Damages from 1st Cause One Month's	of Action -	\$ 1,096.94
2. Damages from 2nd Cause One Month's	of Action -	1,096.94
3. Damages from 3rd Cause One Month's	of Action -	1,096.94
4. Damages from 4th Cause Transportat	of Action -	172.40
5. Damages from 5th Cause	of Action -	90.46
Bluff Hospi  6. Damages from 6th Cause Overtime	of Action -	641.05
7. Damages from 7th Cause	of Action -	50.00
Penalty 8. Damages from 8th Cause	of Action -	500.00
Penalty  9. Damages from 9th Cause	of Action	100.00
Penalty 10. Damages from 10th Caus	se of Action -	400.00
Penalty 11. Damages from 11th Caus	se of Action -	200.00
Penalty 12. Damages from 13th Caus	se of Action -	10,000.00
Fine 13. Damages from 14th Caus	se of Action -	10,000.00
Fine 14. Damages from 15th Caus	se of Action -	50.00
Penalty 15. Damages from 16th Caus	se of Action -	100.00
Fine 16. Damages from 17th Caus		
17. Damages from 18th Cause Double Wage		7,369.94
	ges to 5/16/73	93,193.01
	6% on \$93,193.01	5,591.58 98,734.59

WHEREFORE, plaintiff demands judgement against the defendant in the sum of NINETY EIGHT THOUSAND SEVEN HUNDRED EIGHTY FOUR DOLLARS AND FIFTY NINE CENTS (\$98,784.59), together with the costs and disbursements of this action.

Sworn to before me

this // day of May, 1973.

NEIGHT G. SMITH
NOTICE FORTH STORM New York
Fig. 37-73-9175
Out that in the tau County
Certificate filed in New York County
Commission Expires March 30, 1875

### ANSWER

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
	x	
	:	
JOHN THEODORE GILBERT,		
oom made	:	
Plaintiff,		
	:	ANSWER
-against-		
	:	
AMERICAN EAGLE TANKER CORP.		73 Civ. 2227
Think to the same of the same	:	
Defendant.		
	:	
	X	

Defendant, American Eagle Tanker Corp. answering plaintiff's complaint through its attorneys, Hill, Rivkins, McGowan & Carey alleges upon information and belief as follows:

FIRST: Defendant denies that this is an admiralty or maritime claim within the meaning of Rule 9 (h) and that this is a proper action under the special rule allowing seamen to sue without security and pre-payment of fees.

SECOND: Answering the First Statement of the complaint, defendant admits that this is an action by a seaman against an owner and operator of a vessel and that the complaint sets forth a proported list of damages at its end. Except as so admitted, it denies the remaining allegations of that statement and puts plaintiff to its proof as to the validity of those allegations.

THIRD: Answering the Second Statement of the complaint, defendant admits that American Eagle Tanker Corp. owned and operated the S.S. AMERICAN EAGLE, an American flag vessel, at all material times herein and further admits that the plaintiff was employed as a vacation relief second assistant engineer for a period of time aboard the vessel

A 34

Answer

pursuant to certain Collective Bargaining Agreements then existing between defendant and the National Marine Engineers' Beneficial Association, District No. 1 - Pacific Coast District. Except as so admitted, defendant denies knowledge or information sufficient to form a belief as to the remaining allegations in the Second Statement and puts plaintiff to his proof as to the truth thereof.

FOURTE: Defendant admits that this action is brought in the name of one, John Theodore Gilbert, but except as so admitted, denies knowledge or information sufficient to form a belief as to the remaining allegations in the Third Statement of the complaint.

FIFTH: Defendant admits the allegations in the Fourth Statement of the complaint.

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SIXTH: Answering the Fifth Statement of the complaint, defendant admits that plaintiff was employed as a relief second assistant engineer aboard the S.S. AMERICAN EAGLE for a certain period of time but except as so admitted, defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in that statement.

Answering part (b) of the Fifth Statement, defendant admits that plaintiff has filed a complaint alleging various causes of action and puts plaintiff to his proof as to the truth of those allegations.

SEVENTH: Answering the First Cause of Action, defendant denies each and every allegation contained in Paragraph 1 and Sub-Paragraphs (a) through (g) and puts

plaintiff to his burden of proof cleach and every allegation contained therein. Further, defendant states that this Court does not have jurisdiction of the allegations contained therein because of the specific grievance and arbitration procedures provided for in the M.E.B.A. Tanker Vessels Agreement referred to by the plaintiff in that Cause of Action.

EIGHTH: Answering plaintiff's Second Cause of Action, defendant states that it has no knowledge or information sufficient to form a belief as to the truth of the allegations concerning the physical or mental condition of the plaintiff as alleged in the complaint and further states that it denies each and every other allegation in that complaint and puts plaintiff to his burden of proof of the truth of those allegations. Defendant further states that this Court does not have jurisdiction of these allegations since the M.E.B.A. Tanker Vessels Agreement, referred to by the plaintiff in that Cause of Action, provides for a grievance procedure and arbitration of disputes relating to the interpretation or performance of the agreement.

NINTH: Answering plaintiff's Third Cause of Action, defendant states that plaintiff pleads the existence of a criminal statute which is self-evident, further that it does not provide any civil remedy and further that this Court pursuant to Rule 9 (h) of the Federal Rules of Civil Procedure lacks jurisdiction over this alleged criminal violation.

Except as so admitted, it denies each and every allegation contained in Sub-Paragraphs (a) through (n) and begs leave to refer to the aforementioned Collective

Bargaining Agreement existing between the National Marine Engineers' Beneficial Association and defendant, and further that defendant puts plaintiff to his burden of proof with respect to each and every factual allegation in that Cause of Action. Defendant again reiterates that this Court, under Rule 9 (h) lacks jurisdiction of any alleged criminal violation as claimed in the complaint.

TENTH: Answering plaintiff's Fourth Cause of Action, defendant denies each and every allegation contained therein and puts plaintiff to his burden of proof as to the truth of those allegations and further states that the aforementioned Collective Bargaining Agreement provides for a grievance procedure and arbitration of all disputes relating to the interpretation or performance of the Collective Bargaining Agreement.

ELEVENTH: Answering plaintiff's Fifth Cause of Action, defendant denies knowledge or information sufficient to form a belief as to the allegations concerning the physical condition of the plaintiff and further denies each and every other allegation contained in the Fifth Cause of Action and puts plaintiff to his burden of proof as to the truth of those allegations.

TWELFTH: Answering plaintiff's Sixth Cause of
Action, defendant denies the allegations contained in that
Cause of Action, including those in Sub-Paragraphs (a),
(b), (d) and (e) and denies knowledge or information as to
the truth of the allegations contained in Sub-Paragraph (c)
and further defendant puts plaintiff to its burden of proving
the truth of all the facts alleged in the Sixth Cause of
Action.

THIRTEENTH: Answering the Seventh Cause of Action defendant denies each and every allegation contained therein and further puts plaintiff to his burden of proof as to the truth of the allegations contained therein and further states that this Court is without jurisdiction under Rule 9 (h) to adjudicate the statutory violation claimed and further that the plaintiff is without standing to allege that statutory violation. This dispute is also properly the subject of the grievance procedure and arbitration provision hereinbefore cited.

FOURTEENTH: Answering the Eighth Cause of Action, defendant denies knowledge or information sufficient to form the belief as to the shoe size of defendant and denies each and every other allegation contained in Sub-Paragraphs (a) through (h) and further states that this alleged dispute is within the exclusive jurisdiction of the aforementioned grievance and arbitration procedure.

FIFTEENTH: Answering the Ninth Cause of Action, defendant admits that plaintiff boarded the S.S. AMERICAN EAGLE on December 29, 1971, but except as so admitted, denies each and every allegation contained in the Ninth Cause of Action and further states that plaintiff has no standing to demand the alleged penalty in Sub-Paragraph (a) and further that this Court lacks jurisdiction under that section under Rule 9 (h) of the Federal Rules of Civil Procedure.

SIXTEENTH: Answering the Tenth Cause of Action, defendant states that plaintiff has set forth substantially the wording of 46 U.S.C.A. §6/7 in that paragraph and de-

fendant denies each and every allegation in that Cause of Action and puts plaintiff to his burden of proof as to the truth of those allegations and further that plaintiff has no standing to claim damages under the statutory provision as alleged in Sub-Paragraph (b) and further that this Court lacks jurisdiction of such a claim under Rule 9 (h) of the Federal Rules of Civil Procedure. Defendant also contends that any alleged dispute is cognizable under the aforementioned grievance and arbitration procedure.

SEVENTEENTH: Answering the Eleventh Cause of Action, defendant denies each and every allegation contained therein and puts plaintiff to his burden of proof as to the truth of those allegations and further states that plaintiff has no standing to claim the alleged penalty in Sub-Paragraph (b) of that Cause of Action.

EIGHTEENTH: Answering the Twelfth Cause of Action, defendant denies each and every allegation contained therein and puts plaintiff to his burden of proof as to the truth of those allegations and further states that the plaintiff has no standing to demand the penalty stated therein and further that this alleged dispute is cognizable under the aforementioned grievance and arbitration procedure.

NINETEENTH: Answering the Thirteenth Cause of Action, defendant admits that the master has an obligation to assume the duties of the American Consul with respect to the discharging of seamen in foreign ports when there is no American Consul located in that port and denies any wrong-doing or impropriety in that regard and further denies each and every allegation contained in the Thirteenth

Cause of Action, Sub-Paragraphs (a) through (p) and puts plaintiff to his burden of proof with respect to the truth of those allegations and further states that this plaintiff has no standing to claim the relief requested in Sub-Paragraphs (1), (m), (n), (o) and (p) and further that any dispute plaintiff allegedly has is cognizable under the aforementioned grievance and arbitration procedure.

Action, defe-dant admits the allegation contained in SubParagraph (a) and that the Certificate of Discharge is made
out by the Master and signed in the space provided, but
except as to admitted, denies each and every other allegation
contained in the Fourteenth Cause of Action and puts plaintiff to his burden of proof as to the truth thereof and
further states that plaintiff has no standing to claim the
alleged penalties thereunder and further that this Court
has no jurisdiction under Rule 9 (h) of the Federal Rules
of Civil Procedure to entertain any action under those
sections and further that any alleged dispute under that
Cause of Action is cognizable under the aforementioned
grievance and arbitration procedure. Defendant admits that
plaintiff signed off ship's articles "under protest".

TWENTY-FIRST: Answering the FIFTEENTH cause of action plaintiff admits that a Withholding Tax Statement for 1972 was issued for the plaintiff but except as so admitted denies each and every allegation contained in that cause of action and puts plaintiff to his burden of proof as to the truth of those allegations and further states that plaintiff has no standing to allege the statutory violations

claimed therein nor the alleged penalty claim therein and further states that any alleged dispute as to the amount of wages due is cognizable under the aforementioned grievance and arbitration procedure.

of action defendant denies knowledge of information sufficient to form a belief as to the truth of the allegations regarding people who allegedly sent mail to the plaintiff and further denies each and every other allegation contained therein, sub-paragraph (a) through (k) and puts plaintiff to his burden of proof as to the truth of the allegations contained therein. Defendant further contends that plaintiff has no standing to allege the violations of the statute as claimed in the SIXTEENTH cause of action nor does this Court have jurisdiction under Rule 9(h) of the Federal Rules of Civil Procedure to entertain actions under that statutory provision and also that any disputes as so alleged or properly cognizable under the aforementioned grievance and arbitration procedure.

THENTY-THIRD: Answering the SEVENTEENTH cause of action defendant denies each and every allegation contained therein and puts plaintiff to his burden of proof as to the truth of those allegations and further states that the alleged disputes are cognizable under the aforementioned grievance and arbitration procedure.

THENTY-FOURTH: Answering the EIGHTEENTH chuse of action defendant denies each and every allegation contained therein and puts plaintiff to his burden of proof as to the truth of those allegations and further states that the alleged dispute, if any, is cognizable under the aforementioned grievance and arbitration procedure.

TWENTY-FIFTH: Answering the NINETEENTH cause of action defendant denies each and every allegation contained therein and puts plaintiff to his burden of proof as to the tuch of those allegations and further states that any disputes are cognizable under the aforementioned grievance and arbitration procedure.

## FIRST AFFIRMATIVE DEFENSE

TWENTY-SIXTH: This action is not a proper admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure nor is it a proper action under the special rule for a seaman to see without security and pre-payment of fees.

## SECOND AFFIRMATIVE DEFENSE

TWENTY-SEVENTH: Each and every alleged dispute is properly the subject of the grievance procedure and arbitration provision in Section 2 of the collective bargaining agreement existing between the defendant and the National Marine Engineer's Beneficial Association, District No. 1. Pacific Mutual District, of which plaintiff was a member and which was in effect at all material times herein. Accordingly this Court lacks jurisdiction of the disputes alleged by the plaintiff in this action.

## THIRD AFFIRMATIVE DEFENSE

TWENTY-EIGHT: The alleged claims for wrongful discharge are specifically covered by grievance procedure and arbitration referred to in the Second Affirmative Defense and thus are not properly within the jurisdiction of this Court.

### FOURTH AFFIRMATIVE DEFENSE

TWENTY-NINTH: This Court has no jurisdiction over alleged violations of criminal and other statutes as alleged in the complaint under Rule 9(h) of the Federal Rules of Civil Procedure.

## FIFTH AFFIRMATIVE DEFENSE

THIRTIETH: This plaintiff has no standing to allege violations of the statutory section as set forth in the various paragraphs of the complaint and in particular those set forth in paragraphs 8 through 16 inclusive.

WHEREFORE, defendant demands judgment dismissing the complaint in this action with costs and disbursements or alternatively that this Court order a stay of this entire action pending arbitration under the collective bargaining agreement, or alternatively that this Court order a severance and stay of this action pending arbitration of those particular issues arbitrable under the collective bargaining agreement and for such other further and different relief as this Court may deem just in the circumstances.

HILL RIVKINS MCGOWAN & CAREY Attorneys for Defendant Office & P.O. Address 96 Fulton Street New York, New York 19938 Tel. No. (212) 233-6171

TO: JOHN THEODORE GILBERT
Plaintiff Pro se
123 East 15th Street
New York, New York 1993

A 43

ORDER OF METZNER, J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JOHN THEODORE GILBERT,

Plaintiff,

-against-

PRO SE

73 Civ. 2227

AMERICAN EAGLE TANKER CORP.,

Defendant.

APPEARANCES

John Theodore Gilbert, Pro Se 123 East 15th Street New York, N. Y. 10003

Hill, Rivkins, Carey, Loesberg & O'Brien Attorneys for Defendant 96 Fulton Street New York, N. Y. 10038 Robert J. Ryniker, Of Counsel METZNER, D. J.:

Defendant American Eagle Tanker Corp. (Eagle Tanker) has moved for an order dismissing the first through third and seventh through sixteenth causes of action in the complaint for failure to state a claim upon which relief may be granted. Rule 12(b)(6), Fed. R. Civ. P.

The action is brought by a seaman pro se against the owner and operator of a vessel on which he had been a crew member. The complaint is some thirty pages in length and contains eighteen separate causes of action. Plaintiff is an American seaman who claims that on May 20, 1972, he was improperly ordered off the ship by the master and wrongfully discharged from its crew in Ras Tanura, Arabia. He further claims that at the time of this discharge, he demanded that he be taken before an American consul in accordance with 46 U.S.C. § 686, since he had several justifiable complaints to present to that officer concerning his employment on the vessel. This request was allegedly denied since no consul was present in Ras Tanura. Plaintiff states, however, that a consul was available in Dhahran which was some forty minutes by car from Ras Tanura, and that the master refused to take him there in order to be discharged.

As a result of this discharge, plaintiff has alleged eighteen different claims. The majority of these claims rely on various statutory provisions of the United States Code concerning civil and criminal penalties to be assessed against shipowners and masters for breaches of their statutory duties. Plaintiff claims that these penalties should be paid to him as part of his damages for being wrongfully discharged. Clearly, such sanctions follow successful action by the government, and are not the basis for relief in favor of an individual seaman.

Plaintiff also seeks the recovery of unpaid wages and vacation pay in the amount of \$7,369.94, as well as a double-wage penalty under 46 U.S.C. § 596 for every day that the ship has unreasonably withheld his salary. These claims, which are set out in the seventeenth and eighteenth causes of action in the complaint, are not the subject of the instant motion since they concern allegations as to which relief clearly may be granted. See, e.g., Lewis v. Hudson Waterways Corporation, Docket No. 73-2684 (2d Cir. April 15, 1974).

A seaman who has been wrongfully discharged may bring a suit for the recovery of wages which he would have

earned had the shipping contract been completely fulfilled.

1 Norris, The Law of Seamen, § 482 at 561. Two different rules have developed with respect to the amount of wages which should be awarded in such a case. The majority of cases hold that a seaman is entitled to the wages to the end of the voyage and the amount of his expenses in returning to the port of shipment, less any intermediate earnings. See, e.g., Aird v. United States, 216 F.2d 149 (3d Cir. 1954). The other line of cases only allows wages to the time the seaman has returned to the port of shipment, plus necessary expenses incurred, less any intermediate wages earned. See, e.g., Findley v. Red Top Super Markets, Inc., 188 F.2d 834 (5th Cir.), cert. denied, 342 U.S. 870 (1951). This court is of the opinion that the more liberal rule in the Aird case should be applied here.

In his first cause of action, plaintiff claims that the master did not equally divide the watches on board the vessel, in violation of 46 U.S.C § 673. As a result of this breach, he claims that he should be awarded as damages one month's extra wages as authorized by 46 U.S.C. § 685. Section 685 provides that:

'Whenever on the discharge of a seaman in a foreign country by a consular officer

on his complaint that the voyage is continued contrary to agreement, or that the vessel is badly provisioned or unseaworthy. . .it shall be the duty of the consul or consular agent to institute a proper inquiry into the matter, and, upon his being satisfied of the truth and justice of such complaint, he shall require the master to pay to such seaman one month's wages over and above the wages due at the time of discharge. . . "

In order to obtain the extra month's wages authorized by Section 685, the favorable action of a consul on the seaman's complaint and the discharge of the seaman is required. McCrea v. United States, 294 U.S. 23, 28 (1955); see also, 1 Norris, supra § 49 at 95.

The only justiciable question presented by this first cause of action is whether a seaman might be entitled to damages for the master's specific failure or refusal to take the seaman before a consul at the time of the latter's discharge in a foreign port, thus preventing consular action favorable to the seaman. No caselaw has been discovered on this question. One commentator has stated that a master "who discharges a seaman at a foreign port without the express approval of the American consul leaves himself open to serious charges both criminally and civilly for improper discharge and possibly for abandonment of the seaman." 1 Norris, supra §44 at 88. It appears obvious to this court that

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Order of Metzner, J.

the willful action of a master in refusing to take a seaman before a consul creates a cause of action in favor of the seaman for the relief he could have obtained from the consul. Of course, if the seaman's conduct causing the discharge is such that the safety of the vessel or crew is imperiled, the master is justified in proceeding in any way consistent with his overriding responsibility.

The motion to dismiss the first claim is denied.

The motion to dismiss the second, third and seventh through sixteenth claims is granted.

So ordered.

Dated: April 29, 1974

CHARLES M. METZNER
U. S. D. J.

1	arpd	1
2	UNITED STATES DISTRICT COURT	
3	SOUTHERN DISTRICT OF NEW YORK	
4	х	
5	JOHN THEODORE GILBERT,	
6	Plaintiff, :	
7	-against- : 73 Civ. 2227	
8	AMERICAN EAGLE TANKERS,	
9	Defendant. :	
10	x	
11	December 5, 1974 2:00 p.m.	
12	2.00 p.m.	
13	Before:	
14	HON. CHARLES M. METZNER,	
15	District Judge	
16		
17	APPEARANCES:	
18	DONALD D. OLMAN, Esq. Attorney for Plaintiff	
19	Attorney for Flaintiff	
20	HILL RIVKINS CAREY LOESBERG & O'BRIEN, Esqs. Attorneys for Defendant	
21	By: ROBERT J. RYNIKER, Esq. and PETER W. FLANAGAN, Esq.,	
22	Of Counsel	
23		
24		
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## A 50

.	anni Gilbant Dinast E
1	arpd Gilbert - Direct 5
2	I was going to be paid off in Bahrain. This is the first
3	time I know about it.
4	Q Were you given a pay voucher at that time by the
5	master of the vessel?
6	A Yes, sir.
7	THE COURT: The witness says that he expected to
8	be paid off in Bahrain. Is that the end of the voyage?
9	MR. OLMAN: Let me bring that out, if I may.
10	Q What was to happen in Bahrain?
11	A In Bahrain I went to see the American Consul.
12	Q When you were employed on this vessel what were
13	the conditions of your employment?
14	A I was to remain on the vessel until I got relieved
15	Q On May 20, 1972 did a relief come aboard that
16	vessel?
17	A No.
18	Q To your knowledge when did a relief come on that
19	vessel?
20	A He didn't come there on May 20. I was alongside
21	the ship on the dock until almost 12:00 midnight on May 20
22	and I know what my relief looked like and his name is
23	Mr. Butler.
24	Q Do you know when he came aboard the vessel?
25	A No, I don't know. He did not come as far as I

(Plaintiff's Exhibit 2 for identification received

in evidence.)

Q Mr. Gilbert, Plaintiff's Exhibit 2 in evidence, the pay voucher, shows that it was signed by the master and has a balance due of \$5,121.19 according to the master of the vessel.

What if anything took place betwen you and the master of the American Eagle on May 20 with respect to that amount?

A Well, when I came up to his office and he gave me that wage voucher here I looked at it and I told him that I will have to look it over first.

But my main concern was to see the American Consulbut on the wage voucher itself, at that time I did not check over the figures on it and I had to take it back down to the engine room as I was on watch at that time so I could check it out, as far as the wage voucher itself goes.

Q What if anything happened between you and the master with respect to the payment of this balance due?

A Well, with respect to payment, I told the master
that I did not go for the figures on this pay voucher because
I figured I had at least one more day's earned wages coming
and I don't see it on the wage voucher.

And, furthermore, I think I am entitled also to one

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more, at least one day of travel wages from Ras Tanura to New York; one day's earned wages or wages.

Q Mr. Gilbert, did you request the balance due on this pay voucher from the captain?

A I did, yes, sir, and finally resorted, after everything else, my last request to the captain was, well, I am going to Japan and I had to pay my own way, I wanted at least all the monies you say I have coming on this voucher anyway before I go because he would not let me see the American consul.

Q What if anything did the master of the vessel say to you?

A His only answer to me was he said you can get this in New York.

- Q Mr. Gilbert, at that time, in May of 1972 where were you living, your home?
  - A I lived in Yokohama, Japan.
  - Q Where do you live today?
  - A Yokohama, Japan.
- Q Before 1972, for what period of time had you lived in Yokohama, Japan?

A Since about the latter part of December 1968 right up to the time I was on the vessel, including up to today.

O Are you married?

1	arpd	Gilbert Direct	12
2	A	Yes, sir.	
3	0	To your knowledge was there an American consu	al
4	office in	the area of Ras Tanura?	
5	A	Ras Tanura has one to my knowledge, yes.	
6	Ó	Where was that?	
7	A	In Dahrahn.	
8	Q	Where is that?	
9	Λ	That is approximately 20 miles.	
10		THE COURT: Where did you say it was?	
11		THE WITNESS: D-a-h-r-a-h-n.	
12	Q	Now, was there any way that you could get to	the
13	American c	onsul by yourself?	
14	A	No, sir.	
15	Ö	Would you tell us why?	
16	Α	The entire dock area in Ras Tanura, all ships	that
17	come in, f	oreign and American and other flags, the dock	area
18	itself is	enclosed by a wire fence about 10 feet high w	vith
19	barbed wir	e on top. There is a guard, a soldier, Saud	li
20	Arabian gu	ard at the gate where the cars come in and ou	it of
21	the dock a	rea and that gate is closed at all times and	no
22	seaman can	get outside of that gate.	
23		They have to have special permission from the	

They have to have special permission from the Saudi Arabian government and also from the Aramco officials who control the refineries there.

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Ras Tanura, on the sailing board for Bahrain which is 50 miles away, about a four-hour run which meant approximately sometime between 6:00 a.m. in the morning on May 21 and 8:00 a.m. that vessel would be in Bahrain and I figured -- I don't know yet what happened -- but I thought that Mr. Butler, my relief had come to Bahrain. I don't know.

- Ω Did you request of the captain of that ship that you be allowed to stay on the vessel to Bahrain?
  - A Yes, sir.
  - Q What was the response?

A The response was negative from the captain and he says "You are getting off here."

I says, "Captain, you say there is no American consul in the Port of Ran Tanura and I am demanding to see the American consul down in Bahrain and I am not going to get off the ship because I have a justifiable complaint to make to the American consul.

"The wage voucher you gave is wrong, I got more earned wages coming and you want me to take this here, you still don't want to give me the money I got coming and I demand all my money in cash that you say at least on this voucher so I am demanding to go to the American consul at Bahrain."

Q What did the captain say?

A He said, "Well, you are not going to Bahrain and that is it, that is final. You take your wage voucher to New York."

So I told the captain "I have been going to sea 30 years, we are in a foreign port. I say I need this money bad and at least you could do is give me all the money you say I got coming on the voucher because I want the cash right now, I need the money. If you are not going to give it to me I am going to Bahrain."

The captain says, "If you stay on the ship and try to go to Bahrain I will tell the shore authorities to come aboard this vessel and have you jailed if necessary because you are not going to Bahrain."

THE COURT: Let me get this straight.

You never made any request to see a consul until the master had told you that you were discharged, is that correct?

THE WITNESS: No, sir -- I did. But 5:30 in the morning I told the master when he told me I had to leave the ship at 12:00 noon, I says, "No, I want to see the American consul."

THE COURT: That is the first time you made any request?

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THE WITNESS: The first time, about 6:00 a.m. on the morning of May 20 but at that time I didn't even know I was going to be discharged in Ras Tanura. I was never told that until 6:00 a.m. in the morning approximately.

THE COURT: I understand.

- Q Did there come a time that you arrived in Bahrain?
- A There came a time when I arrived there, yes, sir.
- Q When was that?
- A I left the airport in Dahrahn approximately 1:00 p.m. in the afternoon of May 21 and I guess about 1:30 p.m. in the afternoon when I arrived at Bahrain.
- Q I believe you testified there is an American consular office in Bahrain?
  - A Yes, sir.
- Q Did anything happen to you to prevent you from seeing the American consul office there?
  - A Yes, sir.
    - Q Will you tell us about that?
- A Well, I demanded of the captain to take the ship to Bahrain so I could go to the American consul.
- Ω I am asking you to tell what happens to vou in Bahrain.
- A I tried to go up to the American consul in Bahrain, to see the American consul myself because I thought maybe

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the ship was there too at that time. I could get the captain to come to the American consul and get the entire controversy of mine settled with the American consul at that time.

Gilbert - Direct

- What if anything prevented you from going?
- The immigration would not let me get outside.
- Where? 0

Of the area. I couldn't get through the immigration to go to the American consul. They wouldn't let me go through.

- You were not able to leave the airport at Bahrain?
- No, sir.
- What did you do next?

So I made what efforts I could with immigration and checked around and found out that I could not -- they couldn't let me go through immigration so I could see the American consul.

So I give up on that and I had to concede the fact I could get on the plane and go on the rest of the journey.

- Where did you go next? 0
- Then I went from there to Hong Kong.
- Did there come a time that you eventually arrived in New York?

A When I got in Hong Kong I had all my books on the plane in my bags and I had my personal things and also I had my wage voucher, my certificate of discharge and other papers, overtime sheets, all in my bag and locked in my suitcase aboard the plane.

When the plane got to Bombay, India, en route from Bahrain to Hong Kong, my bags got mixed up there and they lost my baggage. So when I got to Hong Kong the Air India plane I was on, they told me to stay over in Hong Kong to try to get my bags for me. I had all my papers in there.

So I stayed in Hong Kong for two days and it still didn't show up so I notified Air India that I am going to take the plane onto Taiwan and if they find my bags to send them there because they still had not found them. As far as my bag it was left back in Bombav.

Q Is this your discharge you have in your hand,
Mr. Gilbert? Thank you.

When you arrived in Japan what efforts if any did you make with respect to collecting your pav as set forth in the pay voucher?

- A I went down to the agent.
- Q Will you tell us what you said to the agent and where the agent is, who the agent is and what he said to you?
  - A The agent, APO, American President Line Office in

Yokohama and I went down to the agent and all I had with me at that time was a copy of my actual wage voucher and when I went in there I needed money bad so I presented the wage voucher to the agent. He looked at it and says, "Wait a minute, this is a copy, isn't it?"

I said, "Yes, that is a copy." He said, "Where is the original?"

I said I mailed it to the Union in New York because I wanted them to take action to get all the earned wages and everything I had coming and I figured if I mailed my wage voucher ahead of time I could get the Union in New York to help me on that before I even got in here.

- Q That is the MEBA?
- A American Engineers Beneficial Association.
- Q Is that the seamen's Union that you belong to?
- A Yes, sir.
  - 0 What happened next?

A The agent says that he will contact New York and see if he could pay me on the voucher. As far as I know, to come back in three or four days. So I come back about four days I guess it was and he said they wouldn't pay it.

- Q Did he give you any reason?
- A No reason.
  - Q Between that time and the time before leaving Japan

and into New York did you make any other attempts to receive your wages?

- A Make more attempts? While I was in Japan?
- O Yes.
  - A No, I didn't make any more attempts at that time.
- Q What was the purpose of your leaving Japan at that time and going to New York on July 16, 1972?

A I received a letter from my counsel here in

New York. The case I had coming up for trial on July 29,

1972, and I had to be in court.

- Q When you arrived in New York did you then make any attempts to collect your wages from the defendant?
  - A Yes.
- Q Will you tell us the date that you first did anything and what you did?

whether they received all the papers I sent in to them which includes my wage voucher and I tried to get the Union to see if they could get my wages for me, what is on the voucher itself plus all the overtime wages. I went into there too and I didn't get any help from them.

- Q Besides the Union what if anything did you do vourself to collect your wages from the defendant and when?
  - A After I had been in New York for approximately I

(F)

guess six weeks, I was detained there on account of the Union on overtime and I finally went down to the agent, to the company officer and I went down with the patrolman there, Mr. Colon.

- Q Will you tell us when that was?
- A That was sometime in early August I believe of 1972.
  - Q Did you speak to anybody at the defendant's office?
    - A Yes.
    - Q Who did you speak to?
    - A Mr. Marshall, vice-president.
  - Q Will you tell us what you said to him and what he said to you with respect to your wages?

A I went, as I said before with the patrolman from the MEBA, Mr. Colon and he was standing right next to me and when I went into Mr. Marshall's office, he was sitting behind his desk and as soon as we got in there I started to speak first.

I says to him, "I would like to get this matter of my earned wages straightened out here because I want to get the money" and I hadn't got a word past this and the MEBA patrolman, Mr. Colon, said, "Shut up. We are not down here for wages. We are here for overtime."

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- Q Mr. Gilbert, don't tell us what anybody from the Union might have said, just what you said to Mr. Marshall.
- A That is what I said, I didn't say anything else.

  I just said I want to get my earned wages.
  - Q Were your wages offered to you at that time?
  - A No, sir.

arpd

THE COURT: What did Mr. Marshall say to you?

THE WITNESS: Mr. Marshall didn't say a word

after I said that to him.

Q There was no further discussion regarding your wages at that time?

A No, sir.

In August of 1972 now, after that meeting with Mr. Marshall, did you make any further attempts on your own behalf to obtain your wages from the defendant?

A On my own behalf I seen the Union several times.

In fact I gave them a letter demanding that they try to get

my wages for me and they didn't do anything about it.

I waited to see if they would do something and the Union wouldn't do anything for me either.

O What did you do after finding out that the Union wouldn't help you on wages?

A Well, I decided then that I would try to get hold of a lawyer.

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did after that. You left the attorney?

A I left the attorney and I give up trying to look for another attorney for the time being because I was told I could bring up a pro se in court, so the attorney I paid the \$450 briefed me on how to do it so I started to make up the papers myself, then I could find later maybe a counsel and a counsel to handle my case.

Gilbert - Direct

- Q You started an action in this court pro se on your own behalf?
  - A Yes, sir.
  - Q This was May 18, 1973?
  - A Yes, sir.
- New York and May of 1973 when you instituted this action, where were you staying?
  - A 125 East 15th Street here in New York City.
  - O Your regular home is in Japan?
  - A Yes.
  - Q What rent were you paying there?
- A In July of 1972 I was paying \$39 and later on near the end of the year it went to \$42 and \$45 for the last six months or so.
- Q Will you tell us your best estimate what it costs
  you to -- the difference or the additional amount that it

		* • •
1	arpd	Gilbert - Direct 30
2		MR. OLMAN: July 1972 through May 18, 1973.
3		THE COURT: All right.
4	Q	On a daily basis, Mr. Gilbert.
5	A	An average of about \$12 a day.
6	Q	That was the additional monies that you had to
7	spend?	All right.
8		Did you have in addition to rent and food did you
9	have any	other miscellaneous expenses on a daily basis?
10	A	I had I had spent money for my to have my
11	case type	d up uptown.
12	Q	Other than the case itself, you have personal
13	expenses	for laundries and anything like that?
14	,	THE COURT: No, he may have had laundry at home.
15	A	I had laundry expense, that is about all.
16	Q	After May 18, 1973 did you obtain employment on a
17	vessel?	
18	A	Yes, sir.
19	Q	When did you return to New York after that
20	employmen	nt?
21	A	That was around June 15, I believe.
22	Ω	1973?
23	A	1973.
24	Q	Did there come a time when you were required to be

at the office of the defendant's attorney for the taking of

your retention?

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THE COURT: When was that? What is the date of

Exhibit 3 for identification?

Beneficial Association vacation plan through the plan office.

Then the plan office gives you the money.

Q What do you have to show to the Union in order to obtain your vacation pay?

A In order to obtain vacation pay I have to give them a pay voucher signed showing in fact I was paid in cash or my earned wages I had coming, overtime and everything else and also turning in my certificate of discharge, both papers.

- Ω How long in your experience is it before the Union makes payment of the vacation benefits?
  - A Anywheres from four days to a week.
- Q Would you tell us the circumstances under which the Union finally paid your vacation benefits in July of 1974?

A I went to the MEBA vacation plan office shortly after I got into New York, I believe around the first part of August 1972 and being I couldn't get my earned wages I tried to get my vacation pay from the plan office. The Union still had my original pay voucher which was given me aboard the vessel and I asked the Union for this wage voucher because they had it and it wasn't given to me.

So I went down to the plan office and showed them a copy of my pay voucher which I had myself and showed my

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1	агра	Glibert - briect	٥.
2	certificate of	discharge, how long I was employed	aboard
3	the vessel and	demanded my vacation pay.	
4	They	looked at it, a girl in the office	took it
5	in the back roo	om and come back and says they would	in't pay

Ω It took until 1974 for you to obtain your vacation benefits?

it to me. He said you haven't received your earned wages

A Yes, sir.

Q During the period that you were employed on the American Eagle were there occasions that you worked overtime?

A Yes, sir.

O Did you put in a claim for the payment of that overtime?

A Yes, sir.

Would you tell us what happened with respect to that claim?

THE COURT: When did you put in a claim for overtime?

MR. OLMAN: Let me withdraw that question for the moment, your Honor, so I can keep things in continuity.

Q While you were working on the vessel did there ever arise a dispute between you and the master of the vessel

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- A Taken up, yes, sir.
- Q Was any agreement arrived at at that time?
- A I believe Mr. Marshall told me, he says, all you have coming is \$80 or something like that.

MR. OLMAN: May I have this marked?

(Plaintiff's Exhibit 7 marked for identification.)

- O I show you Plaintiff's Exhibit 7 for identification,
  Mr. Gilbert, and will you tell us what it is?
- A This is a check from the American Eagle Tankers
  Corporation dated March 28, 1973, stating they paid me
  \$78.14 for overtime.
  - Q When was that paid?
  - A March 28, 1973.
- Ω Is that the amount that the defendant claimed was due you in addition to -- withdrawn.

Was that the amount that the company said you are entitled to for overtime?

- A That is what they said to me, yes. The company didn't say it, the Union official said that.
  - Q You sent you this check?
- A It comes from Mr. Marshall I guess, the company office.
- O The \$87 Mr. Marshall indicated that was due you was really \$76.14?

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did you seek any medical treatment anywhere?

- A Yes, sir.
- Q Where did you go and what did you do?

A I went up to the hospital and I seen a doctor who operated on me about 18 months before then and explained to him that I just got off a vessel and I was on there about five months and about three weeks ago, which is 10 days before I got off the vessel, I had a little blood in the stools and because of what happened to me before on the ship it worried me and so I wanted him to check me and have some X-rays taken to see if maybe it happens to me on board the vessel.

- Q What did they do?
- A They had X-rays taken, a GI series.
- Q Did you pay for the X-rays?
- A Yes, sir.
- Q How much were the
- A They come to about ninety some dollars.

MR. OLMAN: May I have this marked?

(Plaintiff's Exhibit 9 marked for identification.)

- O Mr. Gilbert, I show you Plaintiff's Exhibit 9 for identification. Will you tell us what it is?
- A This is the wage and tax statement, Copy C from the employee's record for 1972 income tax sent to me by

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American Eagle Tanker Corporation which shows on here wages paid subject to withholding tax in 1972 of \$10,786.32.

- Q Did you receive this by -- how did you receive this?
  - A I received that by mail.
  - Q When?
- A Mailed to Yokohama, Japan and my wife sent to 123 East 15th Street, New York.
  - Q When did you receive it?
- A I received that sometime around the first part of February, I believe in 1973.

MR. OLMAN: I offer it.

MR. RYNIKER: I object to this document, your Honor. It relates to a cause of action dismissed.

MR. OLMAN: It does not relate to any cause of action dismissed, your Honor. This is to show this defendant's position is that they paid him and filed a W-2 with the Covernment indicating that they paid the plaintif. It is just more evidence of bad faith.

THE COURT: Do you mean that he never received that \$10,000 in wages?

MR. OLMAN: That \$10,000 in wages includes the \$5,000 wage claim before the Court.

THE COURT: I will take it if that is what it is

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MR. RYNIKER: I object to that.

THE COURT: Sustained. They paid \$5,000 or thev didn't.

Is it the defense theory you paid him the \$5,000?

MR. RYNIKER: Your Honor, the defense theory is that the \$5,000 was offered him since the very day he left the vessel.

THE COURT: But you never paid him, you are still holding it in your hot little fist. Did you withhold the taxes from him?

MR. RYNIKER: We declared at the end of the year and this is paid, this tax to the Government. The paymaster will testify on the issue. He will explain it.

Q Incidentally, Mr. Gilbert, in your experience when you are signed off at a foreign port do you sign off before an American consul?

A Yes, sir.

MR. OLMAN: Just a minute, your Honor.

(Pause.)

Q Mr. Gilbert, are you claiming here loss of interest on your vacation benefits that you received in 1974?

A Yes, sir.

THE COURT: He testified to that.

A Yes, sir.

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Court other than that which we have just gone through,

Do you have any further claims to present to this

1	arpd Gilbert - Direct/Cross 61
2	A I have for do you mean what I wanted to see
3	the American consul about?
4	Q No, any other claims against this defendant? We
5	have covered the American consul.
6	A I guess that is all we went over on that.
7	MR. OLMAN: I have nothing further, your Honor.
8	CROSS-EXAMINATION .
9	BY MR. RYNIKER:
0	Q Mr. Gilbert, you took this job as vacation relief,
11	second assistant, isn't that right?
12	A Right.
13	Ω So when the regular man's vacation was over, your
14	job was up, right?
15	A Right.
16	MR. RYNIKER: Will you mark this, please?
17	(Defendant's Exhibit A marked for identification.)
18	Q I show you this document, Mr. Gilbert, and ask you
19	if you can tell me what that is.
20	A That is my Marine Engineers Beneficial Association
21	relief clearance card showing that I was shipped out from
22	New York by MEBA.
23	THE COURT: Wait a second. It speaks for itself,

A On December 28, 1971.

doesn't it?

THE COURT: You joined the vessel where he was

When I got all that job finished and mailed to the
Union with the 15-day time limit which is required, then I
set about going up to the hospital and I had an appointment
to be seen by the doctor that operated on me about 18 months
before.
Q That was 16 or 17 days approximately after you

A Approximately two weeks after I arrived I went up to the hospital and made an appointment to have X-rays,

seen the doctor and I had an appointment made to take

X-rays two days later.

Q When you got off the vessel in Ras Tanura on May 20 you were given a first-class airline ticket from Dahrahn to New York by way of Paris, is that right?

A Yes, sir.

Q Instead you went from Dahrahn to Bahrain to Bombay,
Taipai, Tokyo and remained two months in Yokohama.

From there you went to San Francisco, Reno and then New York?

A Right.

Q You stayed for a period of time on business in both San Francisco and Reno, is that right?

A That's right.

Q Mr. Gilbert, you testified on direct examination

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THE COURT: You disagree with the way the reporter reflected your testimony?

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THE WITNESS: What I meant --

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THE COURT: He is not asking you what you meant.

Gilbert	-	Cress	

		THE	WITNE	SS:	I	said	, I	may	have	said	it	that
way,	yes.	Th	at is	the	way	Ip	roba	ably	said	it.		

- O Did you also testify at that time that you didn't know whether you could get the vacation pay?
- MR. OLMAN: May I have the page and line or something?
- MR. RYNIKER: I am not asking a question from the transcript.

MR. OLMAN: I object to the question.

THE COURT: Overruled. Did you or didn't vou?

- Ω Did you testify that you didn't know whether you could get your vacation pay without having collected your earned wages?
  - A I didn't know on that, no.
- O Isn't it a fact, Mr. Gilbert, that your Union representative, Mr. Colon, negotiated various overtime claims with the defendant in this matter and stated to you that what you had coming was \$76?

MR. OLMAN: Objection.

THE COURT: Overruled.

- A That is what he told me, yes, but that isn't -THE COURT: Wait. That is what he told you.
- O You requested the Union to act on your behalf with respect to the wrongful discharge and the alleged wage claim,

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isn't that right?

That is right.

They refused to do anything with respect to those claims, right?

Gilbert - Cross

A Right.

Now, you drew up various watch plans and schedules and everything else when you were aboard the vessel which you sent to the Union but you never received any comments from them on those plans; is that right?

A I never got no action on them at all, no.

THE COURT: That doesn't mean anything, of course. It has no impact on me that they didn't do anything. Put somebody on the stand to testify as to this, there's no basis under the contract for it. The fact that the Union didn't do anything doesn't mean it is not right. It may mean they have a sweetheart contract.

MR. RYNIKER: There will be some testimony on this, your Honor.

9 Mr. Gilbert, your claim for the January 20, 1972 date that the vessel departed Yokohama, you testified that you stood a watch from 4:00 to 8:00 in the morning, worked overtime during the day, seven hours overtime then stood a watch when the vessel left port at 4:00 o'clock in the afternoon, is that right?

## Gilbert - Cross

	Q	Mr.	Gilbe	rt,	in th	e nor	mal	cours	se of	event	s as	far
as yo	our e	xperi	ence	as a	Unio	n man	who	has	been	going	to	sea
for 3	30	ars,	aren'	t Un	ion p	atrol	men	the	ones	who u	isua:	lly
handl	le ov	ertim	e dis	pute	s on	behal	f of	meml	bers?			

A Usually.

Q You received a voucher at Ras Tanura covering your earned wages up to the time you left the vessel less vacation already taken, isn't that right?

A Yes, that is right.

O Did that voucher contain the information specified in the Union agreement, specifically 7G on Page 21 which I will read to you:

"All pay vouchers for regular licensed engineers and for relief licensed engineers must be legible and contain the ship's S name, company name and date."

A Which voucher are you talking about now?

Q The one your attorney marked in evidence.

A The one marked in evidence was not given to me at the time.

Q Did the voucher contain the information I just read to you?

THE COURT: The voucher given by the master when he was discharged.

A That voucher was not given to me at least 48 hours

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Gilbert-cross		Gi	1b	er	t-	cr	OS	S
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vessel that you were willing to withdraw all your disputed overtime if you were allowed to remain aboard the vessel an additional month?

- A No, I didn't.
- Q Mr. Gilbert, when you returned to New York and during the period from November, 1972, to March, 1973, were you registered for a job in the union hall?
  - A What period if that?
  - Q November, 1972, to March, 1973.
  - A November, 1972, to -- was I registered?
- Q November, 1972, to March, 1973, were you registered in the union hall for a shipping job?
  - A No, I wasn't registered.
  - Q Is New York your usual port of shipping out of?
  - A Yes.
- Q Before you joined the American Eagle when was the last time you were abcard a tanker as a licensed engineer?
  - A That was on January 29, 1965, was the last date.
- Q Can you tell me approximately how much tanker experience you have or had in the period of time before you joined the American Eagle?
- A Approximately -- you mean actually aboard a vessel or -- vacation time or everything else or what?

## A 82 Gilbert-cross

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Q As a licensed engineer.

THE COURT: Working on board a vessel as a licensed engineer.

- A About 12 solid years, second and first assistant.
- Q Was that coastwise or foreign?
- A Foreign and coastwise, both.
- Q At the time you left the vessel in Ras Tanura on May 20, 1972, isn't it true that the master said to you that if you demanded your earned wages in cash that he would give it to you?
  - A No, he didn't say anything like that to me.
- Q At the time of your deposition, Mr. Gilbert, were you asked this question and did you give this answer, page 165:
- "O Now, on that day did the master offer you cash or a voucher?
- "A He said if I wanted cash that he would give me cash."

Was that your answer, Mr. Gilbert?

- A Must have misunderstood you if I gave that answer, but I did demand the cash.
  - Was that your answer, Mr. Gilbert?
  - A I said that, yes.
  - Q Thank you. Mr. Gilbert, isn't it true that the

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reason you didn't take your earned wages in cash on the day
you left the vessel in Ras Tanura is because you also
demanded an extra month's wages plus payment for your
disputed overtime?

- A No, that isn't the main reason.
- Q Is it one of the reasons.

THE COURT: If I remember your testimony correctly, Mr. Gilbert, you were not offered any pay of any kind whether earned wages or overtime or a combination of them.

THE WITNESS: That's right.

Q They justsaid, "Here is the voucher as to what you are owed, good-bye and get off."

Is that the essence of what your testimony is?

- A Yes, sir.
- Q Isn't it true, Mr. Gilbert, that the master of the vessel did not prevent you from going up to the consul?
  - A I couldn't go up to the consul in Ras Tanura.

THE COURT: I gathered the master physically didn't restrain him. His statement is he couldn't get out of the enclosed area without the master.

Q When you left the vessel at Ras Tanura, isn't it true that you took an advance of \$2000 in cash plus a

Gilbert-cross

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voucher for the earned wages?

A I took an advance for \$2000, yes. I took it under protest, though, because I demanded half of everything I had coming because on --

THE COURT: Wait a minute. I am trying to find out what you did.

THE WITNESS: I took an advance. I took a \$2000 advance.

- And a voucher for the remainder? 0
- I didn't take a voucher for the remainder. A
- Did you take a voucher and a \$2000 cash advance?
- I had to take the voucher, he wouldn't give me A all the money I had coming.

THE COURT: Won't you please listen and give a direct answer? Answer the question,

- I took the voucher, yes. A
- And \$2000 in cash? Q
- \$2000 in cash, yes.
- After you got off the vessel you gave --THE COURT: Wait a second, a voucher covered

what?

MR. RYNIKER: The balance, the balance of the earned wages.

MR. OLMAN: As certified by the master, your

wrong?

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The master's signature is on the voucher.

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That is false. A

THE COURT: I gather there is no dispute as to what the earned wages were, it is the overtime, or am I

MR. RYNIKER: I would think that is correct, your Honor. Counsel for plaintiff might disagree.

MR. OLMAN: Your Honor, there is no dispute that at least that amount was owed on that voucher.

THE COURT: You dispute the overtime?

MR. OLMAN: The overtime plus the one day that we broughtout and one day travel is the other item.

Q Mr. Gilbert, when you got off the vessel and returned to Japan you sent the original of your pay voucher to the union, is that right?

- A Yes, sir, I did.
- When did you get this back from the union?
- I got that back when I was paid that \$76 check for this overtime which the company says is all I had coming, and that I believe was in March, 1973.

Q Isn't it true, Mr. Gilbert, that from the time you got off the vessel to the present day you have never made a complaint to any United States consul or the United States Shipping Commissioner?

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Did you ever show that to a United States Shipping Commissioner?

THE WITNESS: No, sir..

Q You never obtained a document entitled Certificate of Mutual Release?

THE COURT: I don't know what a certificate of mutual release is.

MR. RYNIKER: It is a government document which will be testified to.

A I never received that and I don't know what you are talking about.

(Defendant's Exhibit C marked for

MR. RYNIKER: Will you mark this, please.

identification.)

MR. RYNIKER: And mark this.

(Defendant's Exhibits D and E marked for identification.)

Q Mr. Gilbert, I show you a document which has been marked Defendant's Exhibit C for identification. Can you tell me what that is?

A This is a voucher work sheet and I was given this less than 48 hours before I was paid off the ship written in ink and pencil both.

Q You were given that document some time on May 18,

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1972, isn't that right?

A That's right, May 18 of 1972.

Q Isn't it true, Mr. Gilbert, that you made no objection at any time as to the mathematical computations and figures in that document?

A When this was given to me I came up from working overtime about --

Q Mr. Gilbert, would you please answer the question?

Did you make any objection to the figures in that document,

the computation and figures as stated?

THE COURT: I don't know what it is. You lost me at this point.

A I didn't check the figures, how could I make an objection.

Q Would you tell us what that is?

A A voucher work sheet which shows wages from December 28, 1971, until May 20, 1972.

Q Do you know if the final voucher is made up from that document?

A I made objection to it, yes.

Q Do you know if their final typed voucher is made up based on that document?

A The final one got different figures on it than this.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

1	rpl3 Gilbert-cross
2	of May 20.
3	Q All right now. I show you a document which
4	has been marked Defendant's Exhibit D for identification.
5	I ask you if you can tell me what that is.
6	A This is a letter I wrote the American Consulate
7	in Dahrahn, Saudi Arabia.
8	Q Will you tell us what Exhibit E for identification
9	is?
10	A This is a letter, my answer to this letter from
11	the American Consultate in Dahrahn.
12	MR. RYNIKER: I offer these two exhibits.
13	THE COURT: Any objection, Mr. Olman?
14	MR. OLMAN: I would like to look at them, if I
15	may, your Honor.
16	No objection.
17	THE COURT: Received.
18	(Defendant's Exhibit D and E for identification
19	received in evidence.)
20	Q Mr. Gilbert, isn't it true that one or more
21	people from your union told you in 1972 that your wages
22	were evailable at the company's office and to go down and
23	get them?
24	A They told me, but not the company.
25	Q The union told you that?

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1	rp15	Gilbert-cross
2		(Defendant's Exhibit F for identification
3	rece	ived in evidence.)
4	Q	Isn't it a fact, Mr. Gilbert, that you never
5	formally s	igned off the vessel to this date?
6	A	I am not required to sign off the vessel. I
7	signed off	under protest.
8	Q	You signed the articles on the vessel?
9	A	I signed off the articles under protest.
10	Q	On the vessel?
11	A	I call that formally. I am allowed to sign off
12	under prot	est and I did.
13	Q	Did you sign the articles on the vessel?
14	Λ	Yes, under protest.
15		MR. RYNIKER: I have no further questions.
16		THE COURT: Redirect examination.
17	REDI	RECT EXAMINATION
.18	BY M	IR. OLMAN:
19	Q	Mr. Gilbert, I believe you testified you came to
20	New York 3	July 19, 1972?
21	A	Yes, sir.
22	Q	That was pertaining to your wages and another
23	case?	
24	A	Yes, sir.
25	Q	That you had pending. What amount of time did you

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1	rpl6 Gilbert-redirect
2	spend with reference to this other case?
3	A I spent approximately two hours in court on July
4	19 of 1972.
5	Q Did you have an attorney representing you on
6	that case?
7	A Yes, sir, an MEBA attorney.
8	Q Something said about that case being appealed.
9	Were you personally involved in the appellate procedures
10	on that case?
11	A No, sir, my lawyers took care of all before I
12	got on the American Eagle. That was started in July of
13	1971. I did nothing after that time.
14	Q The total amount of time spent in New York on
15	this case for you was two hours?
16	A Two hours of my time in the courtroom.
17	Q When you sailed on the American Eagle were you
18	certified fit for duty?
19	A Yes, sir.
20	Ω Were you fit for duty as far as you yourself were
21	concerned?
22	A Yes, sir.
23	Q When you returned to New York something was
24	brought out about the fact that you did not demand your
25	vacation pay from the union.

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(Plaintiff's Exhibit 10 marked for identification.)

Q Mr. Gilbert, I show you Plaintiff's Exhibit 10 for identification. Would you tell us what it is?

A This is a letter made out by Mr. Colon, the patrolman of the MEBA dated September 5 of 1072, written to Captain Marshall.

Q Who is Captain Marshall?

A He isvice-president of -- it's got on here

American -- I suppose it is the American Eagle.

Q Did the union take the position that you were only due \$76 in your overtime?

A No, sir, not on that sheet there.

Q Does this letter show the position of the union with respect to your wage claim?

A Yes, that is.

Was a copy of that sent to you?

A Yes.

MR. OLMAN: I offer it in evidence.

MR. RYNIKER: The only objection I have is that the total claim there is now different from what is being claimed at the time of trial.

MR. OLMAN: I will not offer that with respect to the mathematical amount of the claim, just to show the

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been in existence for all that time, leaking all the time I was on the ship, about 20 days when I came on.

- Q Now, before you arrived -- where was the vessel before Ras Tanura, before May 20 when you were discharged?
  - A Hambel, England.
- Some time between Hambel, England, and Ras Tanura did you request a draw against your earned wages?
  - A I was asked if I wanted a draw.
  - Q What did you say?
  - A I said yes.
  - Q How much did you ask for?
  - A I asked for \$2000.
  - Q When was that?
- A That was about three days out before we arrived in Ras Tanura.
- Q Would you tell us from your experience what a seaman's draw is? How much you are entitled to and what it is usually taken for?

MR. RYNIKER: I object to this.

THE COURT: Sustained.

- Q In any event, you asked for the \$2000 draw and when did you receive that \$2000 draw?
  - A I received that just before I got the -- the

1	(1).)	
	rp22 Gilbert-redirect	
2	captain just discharged me off the vessel.	
3	THE COURT: What do you mean, five minutes be-	
4	fore?	
5	THE WITNESS: I waited for this three days be-	
6	fore.	
7	THE COURT: When did he give it to you?	
8	THE WITNESS: He gave it to me I believe about	
9	2 o'clock or 2.30 or 3 o'clock in the afternoon of May 20,	
10	around there, Judge.	
11	Q At the time that the captain	
12	THE COURTS On May 20?	
13		
14	THE WITNESS: May 20, yes, sir.	
15	THE COURT: What time were you discharged?	
16	THE WITNESS: Around 6 o'clock in the morning.	
17	THE COURT: You said you got the \$2000 at 3.00 p.	, m
18	in the afternoon?	
19	THE WITNESS: Yes, sir, \$2000 draw, advance.	
20	Q You were called up by the captain at 6 o'clock in	1
	the morning and advised that you were discharged from the	
21 22	vessel on May 20?	
	A Yes, sir.	
23	Q Did you remain on the vessel for the balance of	
24	Aba Jan 2	

I was on watch at that time at 6 in the morning.

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Gilbert-redirect

Q Did you work on the vessel at any time after 6.00 a.m. on May 20?

I came up at 4 in the morning and worked from 4 until 8.

A This was a Saturday, and if I was going to stay on the ship for that day, I asked the skipper to stand all the watches at night and get my overtime in here before I left the vessel, if I am going to have to stay here, and he refused that request.

- What time did you finally leave the vessel?
- About 11.00 p.m. that night. A
- Did the captain direct you at any time before 11.00 p.m. to leave the vessel?
  - A Yes, he did.
  - What time was that?
- He first notified me about 5.30 or 6.00 a.m. in the morning when I seen him. He told me I was to get off the ship at 12 noon.
- Q Did he allow you to stay on between 12 noon and 11.00 p.m.?
- A No, he didn't want me to stay on, but I told him I can't get ready.
- Q Did he take any steps to remove you from the vessel between 12 noon and 11.00 p.m. in the evening?
  - A He told me if I didn't get off the ship before

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Gilbert-redirect

they sail at 2.00 p.m. and try to take the ship to Bahrain he would have the shore authorities come aboard and take me off and jail me if necessary.

- Q That \$2000 draw, was that deducted from your amount in your pay voucher, Plaintiff's Exhibit 2 in evidence?
  - A That is taken off the voucher, yes
- Q So that the balance due you at the time of discharge was still \$5121.19?
  - A Yes, sir.
- Q At the time they asked you whether you wanted the draw or not and you said you wanted \$2000, did anybody advise you that you were going to be discharged in Ras Tanura?
  - A No, sir.
- Q Had you taken draws on that vessel before entering previous ports?
  - A One draw.

THE COURT: How much?

THE WITNESS: I believe it was \$1200. They said a thousand, but I said \$1200.

MR. RYNIKER: Objection, your Honor.

- Q Was that \$1200 represented by the advances of \$3200?
  - A That represents the \$1200 draw I got in Yokosuka

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## Gilbert-redirect

January 18, 1972, and represents \$2000 draw I got May 20 about 3.00 p.m. in the afternoon, of 1972.

- Q Which is deducted against the total amount you earned on this vessel?
  - A Yes, sir.
  - Q Do you know what a document of mutual release is?
- A Adccument of mutual release, I don't believe

  I ever seen one because I don't think I ever sent anything
  like that.
- Q Was there a Shipping Commissioner available at the Port of Ras Tanura?
  - A Not as far is know.
- Q Mr. Gilbert, when you were given Defendant's Exhibit C, this work sheet, were you told by anybody the purpose that it was being given to you for?
  - A I wasn't told the purpose, no.
  - Q What did it indicate at that time?
- A It didn't indicate anything much because it was not the final wage voucher. It has --
  - Q You mean this was a voucher work --

wage voucher, I don't expect it is. It was given to you,
I gather from the questions put to you on cross-examination,
as an indication of what you were going to be paid two days

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Gilbert-redirect

ater.

THE WITNESS: That indicates what I would maybe eceive on the 20th, something like it, but it doesn't say was going to be paid off there.

Was this filled out the way it is here at the ime, do you recall?

I don't know exactly whether this is the copy This was all filled out I believe, if I remember right, something like this, yes, that is a copy.

Q You were given this, did anyone tell you that the egular second assistant engineer was returning to the vessel:

They told me he was supposed to return May 20, and that is all I know.

THE COURT: When did they tell you that? THE WITNESS: That was about the time they gave ne this, I guess.

The work sheet? Q THE COURT: Exhibit C? THE WITNESS: Yes, sir. THE COURT: Next question.

Your conditions of your employment was to be employed until the man came back and relieved --

MR. RYNIKER: I object.

Yes, sir.

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## Gilbert-redirect

(Pla	int	iff's	Exhibit	11	for	identification
received	in	evide	nce.)			

- Q Mr. Gilbert, there was an American consular office in Bahrain?
  - A Yes, sir.
  - Q That is the office you wrote to?
  - A Yes.
- Q Did you request the captain to allow you to remain on the vessel to Bahrain?
  - A Yes, sir.
  - Q What was the captain's response?
- A Refused to let me go.

THE COURT: Did you tell the captain you wanted to stay on the vessel so he could accompany you to the consular office in Bahrain?

THE WITNESS: Yes, sir.

- Q Do you have any recollection, Mr. Gilbert, when you actually received this letter? When you actually saw it?
  - THE COURT: What letter?
- MR. OLMAN: Defendant's Exhibit F for identification, the letter of July 11, 1973, to Mr. Gilbert.
- A The first time I actually seen this letter was after I got off the American -- after about a 22-day trip

	A 99
1	rp29 Gilbert-redirect
2	to Europe and back, which is about the time, the very day
3	I came in, I received this letter when I went up to my
4	residence at 123 East 15th Street, just about on that
5	date, I believe.
6	Q On this date?
7	A July 11, 1973. That is the first time I
8	have ever been offered any money here.
9	THE COURT: You didn't take it, did you?
10	THE WITNESS: I already had my case in court the
11	at that time.
12	Q This letter was received by you after you started
13	your action in this case?
14	THE COURT: Obviously, a copy was sent to me.
15	Look at the second page.
16	. O Then the \$5000 mentioned in this letter, or as it
17	says, approximately \$5000, did they at the time of the depos
18	tion offer you \$5000 again?
19	A Not at the time of the deposition, no.
20	Q Did they offer you \$5000 or anything at any time
21	after that time?
22	Λ The only thing they offered me so far is a check
23	for \$76.

THE COURT: The letter says they offered it

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then.

Honor.

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24 25 MR. RYNIKER: He offered the question, your

THE COURT: The burden is on him to ask, their offer is on the table. He either takes it he doesn't take it.

Gilbert-redirect

When you appeared for your deposition did anybody --

- Did you at any time refuse to take it? Q THE COURT: He asked for it, that is the question.
- After July 11, 1973, did you again at any time ask to get your wages?
- Not after July 11, no, because the case was in court. I didn't think I had to.
  - Why did you think you didn't have to?
  - I don't know the law. A

THE COURT: Because you had a case in law?

THE WITNESS: I don't know the law on that.

That is what I thought.

- Was this the first time between your date or discharge that you were offered any money by the company?
  - A Yes, sir.
  - Anybody produce a check to you?
  - No, sir.
  - Or tender any money in --0
    - THE COURT: I don't know why you keep doing that,

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MR. OLMAN: Plaintiff rests, your Honor.

THE COURT: Put the next witness on, Mr. Ryniker.

MR. RYNIKER: Mr. William Geiger.

WILLIAM GEIGER, called as a witness on

behalf of the defendant, being first duly sworn,

testified as follows:

#### DIRECT EXAMINATION

#### BY MR. RYNIKER:

- Q Will you tell us where you are employed and what your duties are?
- A I am employed by the American Eagle Tanker
  Corporation. My duties are paymaster.
- Q Paymaster? How long have you held that position, sir?
  - A Approximately ten and a half years.
  - Q What type of work did you do before that?
  - A Shipping business also.
- Q As part of your duties as paymaster do you become involved in the preparation of wage and tax statements or W-2 Forms for employees?
  - A Yes, I do.
- Q I show you a document which has been marked Plaintiff's Exhibit 9 in evidence. Did you prepare that document?

### Geiger-di t

Q Were you told by the Internal Revenue to change the procedure?

A No.

MR. OLMAN: Objection.

THE COURT: Sustained. It doesn't make any difference.

Mr. Geiger, I show you a document which has been marked as 2 in evidence. Can you explain to us why the figure of 143 days for employment is used on there and why for the vacation and tax purposes the figure of 145 days is used?

A Well, the tax tables are all predicated on the calendar and all the tax books that are available which give you the status and how many days the man worked and the wages and how much tax to deduct, they are actually figured on a calendar basis.

So you take the actual days when you are figuring taxes because of the way the Federal schedules are set up.

Q How about the vacation plan and contribution?

A I think in 1972 the man was entitled to 15 days a month vacation. So actually I did not know the exact computation of the plans when they make the check itself but they would base it on the time he worked and what he had coming in vacation.

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### Geiger-direct

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Why is the figure of 143 days used for the computation of wages?

Well, the wages figured from December 28 through January 27 would be worked one month. From January 28 to February 27 is another month.

This goes on until you reach -- if you don't mind, I wrote it down -- it would figure from there December 28 to January 27, one month. January 28 to February 27, another month. February 28 to March 27, another month. March 28 to April 27, an additional month. April 28 to the period of May 1), would be considered a period of 23 days, counting the days.

- What would the total days he?
- Four months, 23 days.

THE COURT: I gather this is the same testimony about the 30-day month that I heard before, isn't it?

MR. RYNIKER: There is a difference because the one day, this man is testifying there is no extra day involved.

MR. OLMAN: It is two days' difference if we add it up on the calendar, you should pay 145 days. That is what they gave him subsistence for on the pay voucher.

THE COURT: Let as leave this to the end and go ahead with the witness.

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#### Geiger-direct

Q Mr. Geiger, in the course of your employment as paymaster with the defendant, have you ever had occasion when a man has gotten off one of your vessels and has not yet been paid the amount claimed as his vacation benefits at the union?

MR. OLMAN: I object to that. I don't know what that means.

THE COURT: You better get a union official here.

I assume his obligation is to pay whatever his books show.

Isn't that true? Your obligation is to pay the union what the books show?

THE WITNESS: I should be fully funded at the end of each month.

Q If you don't have enough money to deposit in the fund what would the union do?

MR. OLMAN: Objection.

THE COURT: Sustained.

Q Mr. Geiger, according to the exhibit you put in the employer paid the union prior to any return to this country, didn't it? This last exhibit?

MR. RYNIKER: He testified as of May 31.

THE COURT: May 31, 1972. Go ahead.

Q Mr. Geiger, Mr. Gilbert had an outstanding balance of wages for some period of time. Why didn't

	A 105
1	rp40 Geiger-direct
2	you just mail him a check for that?
3	MR. OLMAN: Objection.
4	THE COURT: Overruled.
5	A Well, because it would require him to show proof
6	that he signed off the articles before
7	THE COURT: What kind of proof is that?
8	THE WITNESS: A certificate of mutual release
9	which the Shipping Commissioner would issue the man when he
10	is paid off.
11	THE COURT: You mean you couldn't give him a
12	check until he got a certificate of mutual release?
13	THE WITNESS: No, sir, this is followed in every
14	case if a man comes into the office, I would request he go
15	to the Shipping Commissioner and sign off before him prior
16	to paying him.
17	THE COURT: I thought this man said he signed off
18	He signed under protest.
19	MR. RYNIKER: Perhaps he can explain.
20	Q Mr. Geiger, can you explain if you know the
21	difference between signing off the ship's articles and this
22	certificate of mutual release?

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### Geiger-direct

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THE COURT: He is a paymaster. He ought to know what the requirements are before he pays.

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A I would definitely say in no way can a man present me a voucher for discharge not actually signed by a Shipping Commissioner. I would need evidence he personally signed off the articles that is required before I could pay the man.

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THE COURT: Where are the articles kept for the voyage?

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THE WITNESS: On the ship so long as the voyage is in progress.

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THE COURT: That voyage must have ended a couple of years ago.

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THE WITNESS: Possibly it terminated, but it was in progress when Mr. Gilbert got off. It may have gone on possibly another ten months. I don't know.

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THE COURT: Therefore would the discharge papers be sufficient if that is what he had?

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THE WITNESS: If they were signed by this Shipping Commissioner they would be sufficient.

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THE COURT: Not just by the master?

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THE WITNESS: No, sir, that would not certify he is off the articles.

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THE COURT: That is really countersigned, isn't

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1	rp42 Geiger-direct
2	it?
3	THE WITNESS: Yes, sir. There is a place for
4	the signature of the Commissioner.
5	THE COURT: What is the certificate of mutual
6	release, where do you get that?
7	THE WITNESS: That is issued by the Shipping
8	Commissioner.
9	THE COURT: How does he issue that, on what
10	basis?
11	THE WITNESS: On the strength of the man's voucher
12	and the discharge that he was carrying, he would issue a
13	mutual release.
14	THE COURT: You may proceed.
15	MR. RYNIKER: May I have a minute, your Honor?
16	(Pause.)
17	BY MR. RYNIKER:
18	Q Mr. Geiger, is it your testimony that you have
19	done everything necessary in order for Mr. Gilbert to get
20	vacation pay?
21	MR. OLMAN: Objection.
22	THE COURT: Sustained.
23	MR. RYNIKER: No further questions.
24	CROSS EXAMINATION
25	BY MR. OLMAN:

Mr. Geiger, you figured out this W-2 some time

Geig	er	-cr	0	5

in 1971, is that correct, Plaintiff's Exhibit 9 in evidence?

A It is a 1972 W-2.

- Q When would you fill it out?
- A 1972.
- Q 1972? All right. You mailed this to the plaintiff to that address about February, 1972?
- A No, it was -- not February, 1972, probably January, 1973. That covers the calendar year 1972.
  - Q January, 1973, then?
  - A Correct, probably some time in January.
- Q In January, 1973, you knew that the plaintiff had not been paid his full wages, did you not?
  - A Yes, I did.
- Q You will note Column 2 on this W-2 it says wages paid subject to withholding in 1972.

at all. I think there was an obligation on the company to pay the wages they claim due and to withhold and pay the government what they claim was due. If he doesn't come and pick it up, that is his business.

Q Did it occur to you at the time that you mailed it out to plaintiff and to the government that the plaintiff might put something down less on the tax return which he had

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#### Geiger-cross

2 MR. RYNIKER: Objection, he didn't testify to
3 that.
4 THE COURT: Mr. Gilbert received it. He

THE COURT: Mr. Gilbert received it. He testified he received it on the return receipt requested, which I assume if you exxamine it it shows it came from your client.

MR. RYNIKER: That is not correct, your Honor.
Mr. Colon sent him the check.

THE COURT: You got a return receipt requested on top of that.

MR. RYNIKER: There is this check on top of it.

THE COURT: All right. I think he was crossexamined on his own statement that they could not send the check out or give it until they had the mutual release.

- Q I show you Plaintiff's Exhibit 1 in evidence.

  Do you know what it is?
  - A Yes, a discharge.
- Q It is United States Department of Commerce certificate of discharge of merchant seaman, is it not?
  - A Correct.
- Q Isn't it a fact, Mr. Geiger, that when this is issued by a master of the vessel, the master is acting as a Shipping Commissioner?
  - A No, he is not.

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### Geiger-cross

Q Would you read the hottom part of that, please, where it says "Note"?

### (Exhibit read.)

- Q Did the captain sign on the line signature for Shipping Commissioner?
  - A He did.
- On This vessel, the American Eagle, was the vessel which at that time more or less stayed out in the Persian Gulf area, isn't that so?
  - A She was out there quite a while.
- O Prior to December of 1971 how long had the vessel been out in the Persian Gulf?
  - A I couldn't say right offhand.
  - Q What is your best estimate?
  - A Prior to December when?
  - Q 1971.
- A Perhaps the entire year, but not particularly in that one area.
- Q It did not make any port in the United States for the year before December, 1971?
  - A I don't believe so, but I couldn't swear to it.
- Q Subsequent to December, 1971, how long was this vessel out there?
  - A I could not say.

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### Geiger-cross

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	Q	What	is	your	best	estimate	as	paymaster	for	paying
off	this	vessel	?.							

- A But I don't know how long the vessel was out there. It could be six months or eight months, whatever.
- Q Would you say that this vessel had been out there between that period of time at least two years?
  - A Approximately.
  - Q Without arriving in any American port?
  - A Right.
- Q It is only an American port where you are going to find a Shipping Commissioner, isn't that so?
  - A Yes.
- Q The procedure of the company was to take men rom the United States and send them out by air to that vessel out there to relieve other men working, isn't that so?
  - A That is true, if they were relieved, yes.
- Q Each time a man relieved another man or took a vacation or anything, he left the vessel, isn't that so?
  - A That is right.
  - Q And the company paid him, isn't that so?
- A He would be paid. It depends on whether the man elected to do so.
- Q He would be entitled to the wages he wants when he left the vessel, isn't that so?

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Geiger-cross

A He is entitled to, but he can ask the master for it.

- Q The ship wouldn't be operating if the company continually failed to pay its men, isn't that so?
  - A That is right.
- Q So that these men were paid and you were paymaster and you made sure they were paid, isn't that so?
- A In many cases they returned with a voucher similar to the one Mr. Gilbert has.
  - Q And when they came with the voucher?
- A I send them to the Shipping Commissioner to sign off the articles and then pay.
  - Q But that is only done in New York?
  - A Yes, sir, 17 Battery Park.
- Q Are you saying that there is a requirement of this shipping company that no man on that vessel could be paid until he returned to New York, went down to the Coast Guard and signed some kind of paper and came back to your office; is that what you are telling us?

THE COURT: He didn't say that. Those people who came back with Exhibit 1 had to go to the Shipping Commissioner to sign before he would pay them. He doesn't say he couldn't get paid on the vessel if he wanted to.

Q So that, Mr. Geiger, the operation of this vessel

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## Geiger-cross

1	rp51 Geiger-cross
2	is when a man left a vessel he is entitled to be paid, isn't
3	that so?
4	A If requested so, yes.
5	Q And was the only discharge he was required to
6	obtainwhen he left the vessel Plaintiff's Exhibit 1?
7	A The only discharge he did obtain.
8	Q That is the only one he could obtain?
9	A I have not seen this discharge helore you showed
10	it to me.
11	Q Wouldn't the vessel have a copy of discharge?
12	MR. RYNIKER: Objection to that.
13	MR. OLMAN: Withdrawn.
14	Q Mr. Geiger, you knew that Mr. Gilbert was dis-
15	charged from the vessel on May 20, 1972, isn't that so?
16	A Yes.
17	Q You knew he had wages coming to him?
18	A Yes.
19	Q You knew or at least assumed that the stor would
20	have actedproperly in discharging Mr. Gilbert with the proper
21	papers, isn't that so?
22	A Yes.
23	Q You also knew that Mr. Gilbert was entitled to be
24	paid at that time?

A I had no objection to paying Mr. Gilbert if he

Geiger-cross

presented himself.

Q It is not my question, Mr. Geiger. You also knew that Mr. Gilbert was entitled to be paid on May 20, 1972, at the time he was --

THE COURT: If he asked for it. He said yes, if he asked for it. Mr. Gilbert says he asked for it and they wouldn't give it to him.

MR. OLMAN: No further questions.

REDIRECT EXAMINATION

BY MR. RYNIKER:

Q On the day's travel allowance, Mr. Geiger, based on the testimony of Mr. Gilbert, is he entitled to this day's travel allowance?

A As brought out in the testimony here, he would be entitled to another day's travel time, since he left the vessel late at night, but looking at the voucher you cannot determine what time he left.

If he left in the morning and arrived back in New
York the same day, but if he left at night he would have been
traveling the next date and would be entitled --

THE COURT: Let me understand something. If he left the port of discharge at 6.30 in the morning and traveled west seven hours' difference in time so he could get into

New York technically on the same day, you only give one day's

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Geiger-cross

2 pay?

THE WITNESS: He would be arriving back on the same date that he was getting off.

Q Will you explain if you can?

THE COURT: I traveled coming back and it took me

22 hours and you will give me a day's pay for sitting up

there for 22 hours? I only have to work eight hours a day

to get a day's pay.

MR. RYNIKER: Plus he gets a day and plus an extra day for travel. That is it.

THE COURT: He got off on the 20th?

MR. RYNIKER: He got paid that day.

THE COURT: He is entitled to the 21st you say?

MR. RYNIKER: Yes.

THE COURT: Plus the day, he is entitled to the 22nd also?

THE WITNESS: No, the 21st. The day he was traveling back. He got off the 20th.

THE COURT: I repeat what I said. If he was told at 6.30 on May 20 to leave the vessel and he left the vessel the one-day travel would mean the 20th, wouldn't it?

MR. RYNIKER: Yes. But in this case, your Honor, since he did not leave the vessel until late at night, I am agreeable on behalf of my client that he is entitled to an

extra day for travel.

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MR. OLMAN: Your Honor, it is clearly set forth in the union regulations, which is Plaintiff's Exhibit 4.

THE COURT: He says he is confessing that you are entitled to one day's travel pay. Are you telling me he can't confess?

MR. OLMAN: I welcome the confession.

- 0 Mr. Geiger, do you pay off crew members in other cities than New York?
  - A Definitely.

THE COURT: I understand it, the issue is did he ask and was he refused?

MR. RYNIKER: No further questions.

THE COURT: All right, thank you, Mr. Geiger.

(Witness excused.)

THE COURT: Next witness.

FRANCIS P. POWERS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

#### BY MR. RYNIKER:

- Q Mr. Powers, what is your present employment?
- A I am presently employed as master on the S.S. American Eagle, and I was on my annual vacation.

	A 117
1	rp55 Powers-direct
2	Q Were you the master of the American Eagle on May
3	20, 1972?
4	A I was.
5	Q Can you tell us as of May 20, 1972, how long the
6	American Eagle had been out of the United States?
7	A Two to two and a half years.
8	Q What areas was she operating in?
9	A In the Far East, normally loading in the Arabian
10	Gulfand taking the product on MSC charter to different Navy
11	or Air Force base installations in the Far Fast.
12	Q What is MSC?
13	A Military Sealift Command.
14	Q What type of charter?
15	A The ship has been on a CVC charter for the Navy
16	since 1965.
17	Q Who directs the movement of the vessel, what ports
18	to go to?
19	A The United States Navy.
20	Q What is the particular agency person?
21	A Well; someone in Washington, MSC home office tells
22	the front office of my company where the ship is to go and

The voyage that we are talking about here that Q encompasses May of 1972, what took place, if anything, with

these messages ultimately are relayed to me.

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### Powers-direct

respect to the scheduling of loading and discharging ports?

A The ship had left Hambel, England, and we were led to believe that the ship was going to head into the Island Kingdom of Bahrain and approximately three days prior to arrival in Bahrain the ship was then told that it would not load in Bahrain first, it would to the Port of Ras Tanura, Saudi Arabia, and load part cargo and then proceed to Bahrain for the rest of the cargo.

- Q Now long have you been serving on the American Eagle?
  - A I went aboard the American Eagle in April, 1959.
  - Q You served on her continuously?
  - A Yes.
  - Q What job did you have before that?
- A Initially I was the third mate and I was second mate and chief mate and ultimately master.
  - Q What job did you have prior to 1959?
  - A I was in the United States Navy for 15 years.
  - Q Did you retire, sir?
- A I got out of the Navy and I got in the present employment and I got in the Navy Reserve and I retired out of the Navy Reserve as a Lieutenant Commander this past July.
- Q How long have you served as master on the vessel?

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SOUTHERN DISTRICT COURT HE FORTERS, U.S. COURTHOUSE

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1	rp57 Powers-direct (4()
2	A Since 1969.
3	Q Can you tell me if during the voyage that we are
4	talking about here what kind of watches were maintained on
5	the vessel?
6	A Sea watches, the men stand four on and eight off.
7	Q Can you tell me what time the American Eagle
8	arrived in Ras Tanura on May 20, 1972?
9	A Vaguely. It was just after midnight, the wee
10	hours of the morning.
11	Q Do you know how long the vessel remained in Ras
12	Tanura on that day?
13	A Well, it stayed in Ras Tanura on the 20th until
14	midnight. Then on the 21st it stayed prior to the actual
15	departure, somewhere around 0400, 0430 on the 21st of May.
16	MR. RYNIKER: Would you mark this for identi-
17	fication, please.
18	(Defendant's Exhibit H marked for
19	identification.)
20	Q Captain, I show you a document marked Defendant's
21	Exhibit H for identification. Can you tell me what that is?
22	A This is the deck logbook of the S.S. American
23	Eagle from the period of 5/4/72 through 6/5/72.
24	MR. RYNIKER: I offer this in evidence as Exhibit

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1	rp53 Powers-direct
2	MR. OLMAN: One question on the voir dire.
3	VOIR DIRE EXAMINATION
4	BY MR. OLMAN:
5	Q Is this the rough log or the smooth log?
6	A That is the smooth log.
7	Q Where is the rough log kept?
8	A Aboard the ship.
9	MR. OLMAN: No objection.
10	(Defendant's Exhibit H for identification
11	received in evidence.)
12	BY MR. RYNIKER:
13	Q Would you refer to the exhibit for the days May 20
14	and 21, 1972, and refresh your recollection about the times
15	you gave?
16	A The ship had arrived on May 20 030, which is a
17	half-hour after midnight on the 20th.
18	Q What time did she leave?
19	A It was in port the rest of the day through the
20	20th and on the 21st, the ship had a departure on 0506 in
21	the morning.
22	O Did you discharge any cargo in Ras Tanura?

At the time the vessel departed was Mr. Butler

No, we loaded part cargo of jet fuel.

25 aboard?

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		A 121	1.4
1	rp59	Powers-direct	14::
2	A	Yes, he was.	
3	Q	How many times had you been in Ras Tanu	ra prior
4	to May 20,	1972?	
5	A	Just a guess, some 15 or 20 times.	
6	Q	That is your best estimate?	
7	A	Yes, sir.	
8	Q	When did you learn that Mr. Butler was	to return
9	to the ves	sel and Mr. Gilbert was to be terminated	
10	λ	I got a telegram from the company stati	
11	Butler woul	ld rejoin the vessel and I have a copy o	
12	Q	Would you produce the copy, please?	1 10.
13		(Handed to counsel.)	
14			
15		MR. RYNIKER: Will you mark this, plea	se.
		(Defendant's Exhibit I marked for	
16	. ident	tification.)	
17	Q	Did you receive this telegram aboard the	e vessel?
18	Α	Yes, it came aboard and was received by	the radio
19	operator ar	nd ultimately I get the original or the	first copy
20		MR. RYNIKER: I offer this as Exhibit I	
21		MR. OLMAN: No objection.	
22		(Defendant's Exhibit I for identification	on
23	recei	ved in evidence.)	

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Captain, referring to your logbook, can you tell me what day of the week May 20, 1972, was in Ras Tanura?

#### Powers-direct

- Q I show you Exhibit 2 in evidence, which is identified as the pay voucher given to Mr. Gilbert.

  Did you prepare that document?
  - A Yes, I prepared it and signed it.
- Q Can you tell us what the reason is for the difference in amounts on the two documents?

A Well, there is some 17 hours' difference in overtime, the penalty time, and there is 12 hours of special rate of \$5.26. The overtime varies from 533 hours on my work sheet to 550 hours on the finished typed-up overtime sheet. The base pay comes to the same and the slop chest entry is the same.

The withholding tax would be different, the Social Security is the same because Mr. Gilbert either -- the way I figured would have paid the maximum that he was supposed to pay for that year.

on the completed voucher and then the difference in the withholding tax is to reflect that 17 hours.

THE COURT: Let me see, the hours on Exhibit 2 are 17 hours greater than Exhibit C?

THE WITNESS: Yes, sir.

- Q Do you know what the reason for that was, Captain?
- A I prepared this several days in advance and they

Powers-direct

would be doing repairs in the engine room and Mr. Gilbert was working overtime and I just couldn't predict two days or two and a half days or whatever it was in advance as to how many hours it would take him to complete the specific job.

Q Where did you get the final overtime figure from that you used in Exhibit 2?

A The chief, like after we get in port or get to the dock, put it that way, the chief would then bring me his overtime sheet and predicated on the agent's word that Mr.

Gilbert would be taken off at noon, the four hours is 0400 to 0800 on Saturday morning, would be part of that 17 hours, but the chief would give it to me completed.

Q How was the disputed overtime handled for Mr. Gilbert?

A Well, someone writes down what he thinks is overtime, what he has coming. It is submitted to the department head. The department head weekly, normally on
Monday, would collect the sheets and look at them and check
them over.

Work done, that he knew was done, and if there was a difference of opinion he would get the man involved and see perhaps there is something he didn't know, discuss it, come to a meeting of minds if possible.

Powers-direct

If there was no meeting of the minds, the item would then be put on what we call the disputed overtime sheet and held until payoff time.

Q Then what happened with the sheet then?

A At the payoff time, the way the union agreement would normally be handled he would be in Continental United States, there would be a patrolman from the particular union in discussion and the master, perhaps Captain Marshall or someone from the company and the man involved would get together and they would discuss these particular disputed overtime hours.

If they could not come to a meeting of the minds, the thing could eventually go to the union where they have machinery set up to handle disputed overtime sheets and ultimately 't could go to arbitration.

Q What about in foreign ports?

A There is no union representatives normally in a foreign port, so in a case like Mr. Gilbert's, there is no one there to argue for him in this particular matter and according to the agreement, he submitted this overtime, the chief gleaned all the disputed hours, put it on a separate sheet and gave his interpretation as to why the overtime disputed, it was passed to me as per the agreement. I had it, it would then be forwarded to the company, a copy given

OUTHERN DIST ICT COURT MEPORTERS, U.S. COUR

to Mr. Cilbert's union, and then they normally would get together and thrash it out.

Powers-direct

Q I show you Exhibit B in evidence. Are those the disputed overtime sheets for Mr. Gilbert?

A Yes. And, as I say, gleaned from the submitted sheets by the chief, typed up on a special group of sheets called the disputed overtime and then passed on to me and I would send copies to New York and give a copy to Mr. Gilbert, the chief would keep a copy and the company and everybody gets a copy.

THE COURT: We will adjourn now for lunch and resume at 2.15.

(Luncheon recess to 2.15 p.m.)

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#### AFTERNOON SESSION

2.15 P.M.

FRANCIS P. POWERS, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. RYNIKER:

- Captain Powers, who made the arrangements for the repatriation of Mr. Gilbert?
  - My company office in New York.
- Did the agent in Ras Tanura have anything to do with it?

A He ultimately executed the company's desires in this matter. The company sent a message or a Telex to the agent in Ras Tanu ma telling him who would come to the ship, who would get off the ship and how they wanted them handled, whether they should be flown, type of transportation and such.

What type of arrangement did the agent make for Mr. Gilbert?

MR. OLMAN: Objection to what the agent did.

THE COURT: I assume we have some indication.

The agent would procure a firstclass --

THE COURT: What happens here. What happened in this case with Mr. Gilbert?

THE WITNESS: Your Honor, I never saw the ticket,

Powers-direct

but the ticket was purchased for Mr. Gilbert to fly from Saudia Arabia to the City of New York firstclass air transportation.

Q What time was Mr. Gilbert scheduled to leave the vessel?

A After the American Eagle was cleared by local customs and immigration people, the agent comes aboard and we handled different things that have to be handled and one of the things is a discussion with the agent about when is the second engineer coming and when is Mr. Gilbert going. I would have to know when Mr. Gilbert is going, he would tell me when Mr. Gilbert would leave, leave that day.

Q How far is Ras Tanura from Dahrahn?

A I measured it off on a nautical chart and it is approximately 45 miles by my reckoning.

Q How far is Ras Tanura from Bahrain?

A Bahrain, in a straight line would be about four miles. By sea going through one channel, shallow water channel, is 90 miles, the long way around that certain tankers would take, it would be I think 110 to 125 miles.

Q Did you sign the original of Mr. Gilbert's pav voucher?

A Yes, I did.

Q Did Mr. Gilbert ask you to take him to the United

#### Powers-direct

2 States Consul?

A At the time of Mr. Gilbert's discharge he wanted to go to see an American Consul in Ras Tanura to present certain things to the consul, but there was no consul in Ras Tanura.

THE COURT: He says that he was discharged -- what time of day was that?

THE WITNESS: Your Honor, to the best of my recollection it was in the morning, early in the morning. BY THE COURT:

Q At that time Mr. Gilbert said to you he wanted to see the consul at Ras Tanura?

- A Yes, sir.
- Q Why did he want to go and see him?
- A He wanted to get the disputed overtime claim settled.
  - Q What did you say to him?
- A I told him there was no American consul in Ras
  Tanura for me to take him to.
- Q What did he say in reply to that? Tell us what happened.

A He and I got into a discussion, had a difference of opinion. He did not want to leave the ship and I told him, "Your replacement is coming from the States, you are a relief man, your employment is going to be terminated

rp69

Powers-direct

because the regular man who is on the job is coming back.

Therefore, I have to send you back to the States. You are excess baggage and I have no room for you on the ship, legal right to carry you and keep you and therefore you have to go and there is a machinery in your union agreement to take care of disputed overtime.

"You can disagree, I can be wrong or I can be right, but it is not up to me. I have disputed it, the machinery will be put into operation to ultimately determine whether you got the money coming or not. It is beyond my capability."

I continued in this vein with Mr. Gilbert and I actually got to the point where I was pleading with Mr. Gilbert to please go. I can't physically push him overboard, I can't shoot him, but I wanted him to go and he did not want to go because of this contention over the disputed overtime.

So finally he said he would go and "I will sign the two sheets of the articles which is the release sheet, I will sign it under protest," which he did.

THE COURT: Go ahead.

BY MR. RYNIKER:

- Q Did Mr. Gilbert ask you to carry him to Bahrain?
- A I don't recall this conversation, no, sir.

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Powers-direct

Q If he had would you have carried him there?

MR. OLMAN: Objection.

THE COURT: Sustained.

Q Did you make any threats to Mr. Gilbert at any time?

A Never.

Q Did you threaten to have him jailed if he didn't leave the ship?

A I emphatically did not.

Q Will you please, Captain, in your own words tell us what happened with respect to the payment of his earned wages?

A Mr. Gilbert had so many dollars coming to him.

I figured out his pay. As he stated, I gave him so much in cash and I gave him the rest in a voucher.

Q Mr. Gilbert on deposition states --

THE COURT: Wait, don't tell me what is in this deposition. I want to know what he said to you and you said to him on the morning of May 20 on board your vessel.

A I paid him the cash that he wanted, your Honor, and then I gave him a voucher for the rest, which is the normal thing at sea.

THE COURT: Did he ask for the rest of the money in cash?

		A 131	154
1	rp71	Powers-direct	,,,,,
2	THE WI	TNESS: No, your Honor, he	did not.
3	THE CO	OURT: Did he ask for it by	check?
4	THE WI	TNESS: I can't write chec	ks, he couldn't
5	have asked me.		
6	THE CO	OURT: Did he ask you?	
7	THE WI	ITNESS: He did not ask me	for his total
8	payoff in cash.		
9	THE CO	OURT: Did he specify the a	amount he wanted
10	in cash?		
11	THE WI	ITNESS: Yes, sir, your Hor	nor, he did.
12	THE CO	OURT: How much?	
13	THE W	ITNESS: I thought it was	\$1000. He alleged
14	\$2000.		
15	Q Do you	u remember?	
16	A I have	e looked it up. I haven	't look it up
17	recently. To m	y recollection it was \$100	0.
18	Q Capta	in, I show you Plaintiff's	Exhibit 1 in
19	evidence. Did	you prepare that document?	
20	A Yes,	I did.	
21	Q Did y	ou sign that document?	
22	A Yes,	I did, signed on the botto	m line, three

A Yes, I did, signed on the bottom line, three places to sign. The top line for the seaman, the middle line for the master of the vessel and the bottom line for the United States Shipping Commissioner or master of the

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#### Powers-direct

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vessel.

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In where the master would normally sign I have typed a note "Man completed vacation relief and no U.S. consul available so paid off by master." On the bottom line the Shipping Commissioner would sign, I put my name, I signed my name.

I also scratched out at that time the U.S.

Shipping Commissioner and drew a line through it, so the only thing remaining under this is "or master of vessel."

- Q Did Mr. Gilbert on May 20 demand payment of an extra month's wages?
  - A He did not.
- Q What did Mr. Gilbert say to you, if anything, about medical problems?
- A He mentioned to me that he wanted a master's certificate, which was issued to him.
- Q What did Mr. Gilbert say to you, if anything, about transportation?
- A I can't recall any specific -- I mean discussion with Mr. Gilbert over transportation. It was arranged as per the union agreement to send him back to the port of engagement, which was done.
- Q What was the nature of the cargo you loaded in Ras Tanura?

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MR. RYNIKE I have no further questions, your

4 Honor.

#### CROSS EXAMINATION

#### BY MR. OLMAN:

Q Captain, before the ship arrived in Ras Tanura, is it not a fact that Mr. Gilbert asked for a \$2000 draw?

A Mr. Gilbert had to put in for a draw because money was given to him.

Q So he did ask for a draw before arriving in Ras Tanura, isn't that so?

A Yes.

O What is a draw?

A A draw is an advance on the man's wages.

Q That is a customary thing for a seaman to have, for money available to them when they arrive at another port, isn't that so?

A Yes.

Q The money that you gave him in Ras Tanura, that was part of his draw, wasn't it?

A Yes.

Q As a matter of fact, he asked for \$2000 draw and received a \$2000 draw in Ras Tanura, isn't that so?

A Yes.

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	A 134
1	rp74 Powers-cross
2	Q The release sheet that you spoke about, that is
3	the articles of shipment, isn't it?
4	A Yes.
5	Q The large sheet of every seaman or sailor signs
6	when he boards and is discharged from the vessel?
7	A Yes.
8	Q That is the official discharge from the vessel?
9	A Yes, sir.
10	Q Whether under protest or otherwise?
1	A Yes, sir.
2	Q In foreign ports you as captain are actually
13	acting in the capacity of a Shipping Commissioner?
14	A No, sir, I don't believe I am.
15	MR. RYNIKER: Objection.
16	THE COURT: Who else would know better what the
17	answer is?
18	A I say I don't think I am a Shipping Commissioner
19	your Honor. That is an official title. I don't have it.
20	Q Now, Shipping Commissioner is not a when we
21	talk about a Shipping Commissioner we are talking about a
22	United States Shipping Commissioner?

Yes, sir.

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They are only available in the United States, aren't they?

#### Powers-cross

A There is no Shipping Commissioner in Ras Tanura or any foreign port but the United States. American consuls act as Shipping Commissioner in foreign ports.

Q Where an American consul is unavailable as a Shipping Commissioner you as captain of the vessel have the power and the legal right to discharge a man, isn't that so?

A I initiate the process but I do not complete the process.

Q When he signs these articles of discharge the process is completed?

A No, sir, it is not.

Q What is left to do?

A In foreign ports when I pay a man without the benefit of consul, eventually he has to appear before a consul official somewhere, whereupon a State Department form known as a seaman's action, a multiple-carbon form is filled out, the place, the date, the name of the ship is put on it and he puts the man's name, wherehe got off, the wages paid, wages due and the circumstances to why he is not physically being paid off in front of this consular official.

Copies are sent to Washington, I am given a copy to go with my articles so that the articles at their expiration are completed and sent to the Coast Guard in Washington.

There will be a form to show what happened to this

#### Powers-cross

man. He came on the articles by a Shipping Commissioner and left and this shows how he left.

On this discharge, Captain, on the bottom of it where it says, "Whenever the master performs the duties of a Shipping Commissioner under this Act," as master of vessels for many years, what does that mean?

A When the ship runs coastwise and you are on coastwise articles the Shipping Commissioners are not used by going from New York to Miami, the man is then discharged, no Shipping Commissioner is used and you sign on the bottom line, which is the United States Shipping Commissioner's line or the master's line.

I would sign the third line because I am then acting for the Shipping Commissioner.

- Q All right. In any event, the seaman becomes discharged in a foreign port, if he wants it he is entitled to his full wages?
  - A Yes, sir.
  - Q In cash?
  - A Yes, sir.
- Q Incidentally, when did Mr. Butler arrive on the vessel?

A He arrived some time after the vessel left the dock the morning of, I think, the 21st, and to the best of

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Powers-cross

my knowledge, I would say around 0400 in the morning.

- Q 4 o'clock in the morning?
- A Yes, somewheres thereabouts.
- Q May 21?
- A This is Sunday morning.
- Q The day after Mr. Gilbert was discharged?
- A Yes, he left on the 20th.
- Q So that when Mr. Gilbert left the vessel Mr. Butler was already on this vessel?
  - A No, sir, he was not.

Mr. Butler in on the 20th and the agent therefore has to arrange to take Mr. Gilbert off on the 20th. The fact that Mr. Butler for some reason beyond his control doesn't get there till 4 o'clock this morning, I don't think entitles Mr. Butler to any more pay unless you tell me where the agreement has it.

MR. OLMAN: Well, your Honor, the point I am talking about is that Mr. Gilbert testified he was hired as relief to relieve Mr. Butler. When Mr. Butler --

THE COURT: Is there any written indication what his term of employment was?

MR. OLMAN: No, your Honor, that is the custom.

THE COURT: Ask him what the custom is.

MR. OLMAN: I don't know whether I should ask him that question.

THE COURT: Then produce the witness. But I can't believe that a man is told that he is going to be on this vessel while the relief man is on vacation, the person goes on vacation and when vacation is up and the man is a little delayed, I don't think that the plaintiff is entitled to an extra day's pay. He was to be off this vessel.

MR. OLMAN: But what we claim is that Gilbert's term of employment is not to leave that vessel until the relief arrives on that vessel. Otherwise the vessel is shorthanded an officer.

THE COURT: That is their problem. I think that is your problem.

MR.OLMAN: That is the purpose of the rule or understood rule that one man relieve another on the vessel the same as --

THE COURT: This man, the fellow got there.

MR. OLMAN: The watch officer might relieve another watch officer on the vessel. Otherwise --

that. If a man is supposed to be on the vessel on May 20 the defendant is entitled to arrange for the relief or repatriation of the plaintiff on May 20.

SOUTHERN DISTRICT COURT REPORTERS 11.5. COURTHOUSE

#### Powers-cross

Now, he is told, "You leave at 12 o'clock so whatever arrangements we have made you can leave," and it turns out that the person whom he was relieving doesn't show up until 4 o'clock the next morning for conditions beyond his control, I don't think the plaintiff is entitled to another day's pay.

You are going to have to show me that the employment here of this plaintiff was that he has to physically stay on the vessel until the man he had relieved is physically back on the vessel.

MR. OLMAN: That is the testimony of the plaintiff, your Honor.

THE COURT: I won't buy it. It doesn't make any sense.

#### BY MR. OLMAN:

- Q This telegram that you received doesn't say when Mr. Butler was to arrive at the vessel, does it?
  - A No, sir, it doesn't.
  - Q You didn't know?

THE COURT: But the agent knew when he came on board the vessel.

- Ω You didn't know when you received this Telex when Mr. Butler was arriving?
  - A It doesn't state it, but he was to arrive on the

r	:p80	)
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#### Powers-cross

20th. He was to get there on the 20th.

- O When did you find this out?
  - A The ship I got put the time.

THE COURT: He knows when the ship is going to be in Ras Tanura and he only knew when it was going to be there because they told him to stop there on the 20th.

- Q Captain, isn't it a fact that a vessel must, barring an emergency, sail with a full complement of engineers?
  - A Yes, sir.
- O So that if one engineer is discharged before he is relieved, there is a possibility that the ship would not have a full complement of engineers, isn't that so?
- A Under the conditions that prevailed on the American Eagle at that time it was covered.
  - Q I am asking you, Captain, wouldn't that be so?

    MR. RYNIKER: Objection.

THE COURT: Overruled.

- A I can tell you what happened to me on the American Eagle.
  - Q Is that true or not true?
- A Give it to me again.
  - Q Let me put it this way: as master of the vessel part of your duties is to see that you have a full complement of engineers on this vessel at all times, isn't that so?

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A Yes, sir.

Q So that if you discharge one engineer before he is relieved by another engineer, there is a possibility that you would not have a full complement of engineers on the vessel, isn't that so?

A It is a possibility.

Q So that wouldn't you be acting in your best judgment as captain to see that when one engineer leaves the vessel another engineer is there to take his place?

advised that the man is going to be there on the 20th.

The agent also told him that he is to be there on the 20th and arrange for Mr. Gilbert to leave on the 20th. That is sufficient for a person to rely on the coming of Mr. Butler on the 20th.

MR. OLMAN: I won't pursue it, your Honor.

Q Captain, this telegram refers here to the Lamby letter?

A Yes.

Q Is Lamby a union representative?

A Yes, sir.

Q MEBA?

A Yes, sir.

Q The letter they are referring to, that was the

A 142 171 1 rp88 Powers-cross 2 THE COURT: He is entitled to look at a document 3 that you showed the witness to refresh his recollection. 4 MR. RYNIKER: I know what it is. I have a copy. 5 MR. OLMAN: I offer it in evidence. 6 MR. RYNIKER: I object to it. 7 THE COURT: Sustained. 8 Q Captain, is there an airport in Ras Tanura? 9 A Possibly something belonging to the Ramco, the 10 oil company, but not a commercial airport. 11 0 That is in Dahrahn? 12 A Yes, sir. 13 That is about how far from Ras Tanura? 14 A A good hour, I guess. 15 0

Where there is a United States American consular office?

Yes, sir. A

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0 Is there one in Bahrain, too?

Actually the Embassy is in Bahrain.

Did you go to the Embassy in Bahrain with respect to the discharge of Mr. Gilbert?

I would have to refresh my recollection. I don't know.

How would you refresh it?

A If I could see the official logbook. Does anyone

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have it?

That is not it, this is a Federal document issued by the Coast Guard.

Q Isn't this the deck logbook?

A Yes, the official logbook is government-owned and filled in and returned to the government.

Q Isn't this the logbook of the vessel required by you as the master to maintain?

A Yes, sir, it is. But it is entirely separate document required by the Federal Government.

Q Would you make any entry in this logbook as to whether you saw the United States consular officer?

A No, sir, it would be in the Federal.

Q Would you consider seeing the United States consular officer for something that took place on a ship, a matter of interest to the ship's owners?

MR. RYNIKER: I object to that.

THE COURT: I don't know what it means.

Q You don't recall whether you saw the American consul in Bahrain or not, do you?

A No, sir, I do not.

MR. OLMAN: May I have this marked as an exhibit.

(Plaintiff's Exhibit 13 marked for

identification.)

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# A 144

1	rp91 Powers-cross
2	Q Is it required when an officer arrives on board
3	a ship to log him in?
4	A No, sir.
5	Q Is there anything on the vessel where you note
6	discharge of one man and the employment of another man?
7	A Each is on articles themselves and initial the
8	logbook and the personal data sheet, which is a company form.
9	Q Have you been up to the United States consul
10	offices in Dahrahn?
11	A Yes, sir, I have.
12	Q The way you would get there is by going through
13	Ras Tanura and driving up there?
14	A Yes, sir.
15	Q That would take about an hour?
16	A Yes, sir.
17	Q You had a ship's agent in Ras Tanura, isn't that
18	so?
19	A Yes, sir.
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23	Q As a matter of fact, on May 20, 1972, there were

As a matter of fact, on May 20, 1972, there were several of the company officers aboard this vessel, weren't there? Do you recall?

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A Sir, referring to merchant officers aboard my

1	rp92 Powers-cross
2	ship or stationed on the ship or people from my front office?
3	Q From your office.
4	A No, sir. This is May 20?
5	Q May 20. What is that?
6	A It means that you basically have no illness
7	aboard, you have a clean bill of health, healthwise.
8	Q Was the fact that Mr. Gilbert signed off under
9	protest something that is required to be placed in the ship's
10	log?
11	A No, sir.
12	Q Will you consider the fact that he signed off
13	under protest be an incident that would affect the interest
14	of the owners?
15	A Yes, sir, and I told them.
16	Q You would consider it?
17	A Yes, sir.
18	Q Would you also consider the fact that he did not
19	take all the pay with him when he left the vessel an
20	interest affecting the interest of the owner?
21	MR. RYNIKER: I object to that.
22	THE COURT: Overruled.
23	A It would, and I so told the company.
24	Q I show you Defendant's Exhibit H for identifi-

cation and ask you to read paragraph 17 of the instructions

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on the logbook.

Λ 17?

Q Yes.

A "Any incident however trifling affecting the interests of owner of the ship or the owners of the cargo will be subscribed in the log."

MR. OLMAN: I have no further questions.

THE COURT: Sure, you do. Is this the sort of incident that should have been referred to the logbook?

MR. OLMAN: The answer is yes, sir, affirmatively.

THE COURT: You didn't put the question.

Q Is it recorded in the logbook?

A No, sir, it is not.

THE COURT: Why not?

THE WITNESS: I did not think it of sufficient interest to notify the company, sir.

MR. OLMAN: No further questions.

REDIRECT EXAMINATION

BY MR. RYNIKER:

Q You testified that you were up to the consul in Bahrain. How many times is that?

A One time.

Q For what reason?

A I had a narcotics problem on my ship. I dis-

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#### Powers-redirect

cussed it with the Suida boarding officer. I thought it was of sufficient interest and they arranged for me to go up and discuss it with the American consul in Dahrahn.

MR. RYNIKER: Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. RYNIKER: Mr. Marshall.

HARRY W. MARSHALL, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

## BY MR. RYNIKER:

Mr. Marshall, are you presently employed and what are your duties?

A American Foreign Steamship Corporation, which is the parent corporation of American Eagle Tankers Corporation.

I am vice-president handling the operations, personnel, maintenance of the vessels.

- O How long have you had that job, Captain?
- A As vice-president, about eight years.
- Q How long have you been with the company?
- A 30 years.
- Q What job did you have before that?

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#### Marshall-direct

- A As port captain, assistant port captain and now vice-president.
  - Q Have you ever sailed as master?
- A Yes.
  - Q How long?
  - A About one month.
  - Q Did you ever have anything to do with the arrangements for Mr. Butler to return to the vessel?
    - A Yes.
    - Q In May, 1972?
    - A Yes.
      - Q Will you tell us what was done?
  - A His vacation time was up and we had received information from the Navy in Washington that the ship was going to Bahrain. We booked the flight for him to leave New York on the 18th of May and arrive on the 19th.

72 hours out of the port the master radioed Brhrain and asked for specific loading instructions. They advised him to go to Ras Tanura.

We cancelled the flight to Bahrain on the 18th and arranged for another flight for Mr. Butler to leave on the 18th from Boston and arrive on the 19th.

O Do you recall if Mr. Butler arrived there on the 19th?

#### Marshall-direct

A No. He was delayed enroute by some plane stoppage in Frankfurt, Germany, and proceeded on to Beirut, where he spent the night and arrived some time the evening of the 20th.

- Q In Ras Tanura?
- A In Dahrahn.
- Q Captain, did you become involved in the overtime dispute that Mr. Gilbert had on the American Eagle after he got off the vessel?
  - A Yes.
  - Q What was your involvement?
- A First, I believe in April I received a call from the MeBA in New York saying that they had received a telephone call from England, from the chief engineer of the vessel, Mr. Coleman.

He also stated that Mr. Lamby had received some letters regarding watch standing. Later we received a copy of the letter that Mr. Lamby had written to Mr. Gilbert regarding watch standing.

- Q What happened after that?
- A This letter, the entire understanding that I had of this was the fact that the first assistant did not stand watches on weekends. He would take a day watch but not take a weekend watch.

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We immediately called Mr. Butler who was ashore and also Mr. Burns, the chief engineer, who was ashore, and both stated that the sea watches were always maintained and they had been and consequently the ship had been sailing for about 13 years with this arrangement, and that is watches were maintained at sea and in port.

And that in every port the ship had been in for many years, when this question had come up about the first assistant, every patrolman had ruled that he was not to stand the weekend watch because this deprived the other engineers of their Saturday and Sunday overtime.

It amounted to one day out of every four on a rotation basis. We received a copy of this letter and Mr. Lamby --

Q What did you do after you received the copy of the letter?

A Well, we reviewed it and on the basis that Mr.

Lamby says the tanker agreement does not specify this method of allocating night watches between the three engineers, because primarily under normal operations tankers were assumed to be in port only a day at a time.

He continued on to say that in --

MR. OLMAN: Are you going to put that in evidence?

MR. RYNIKER: Do you want to put it in?

Marshall-direct

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THE COURT: What is the number?

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MR. RYNIKER: 13, your Honor.

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THE COURT: Is it in evidence now? Anybody offer

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it?

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MR. RYNIKER: I am not going to ofter it.

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MR. OLMAN: I object to him reading it.

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THE COURT: I sustain it.

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BY MR. RYNIKER:

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Q What happened?

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THE COURT: Strike all the testimony regarding the

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letter. Put the letter in.

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MR. RYNIKER: All right, we will put the letter in.

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THE COURT: You want the witness to testify from

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it. It doesn't make sense to me unless you are trying to hide

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something.

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(Defendant's Exhibit J, formerly Plaintiff's

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Exhibit 13 for identification, received in

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Q What happened with respect to the letter?

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A Well, he said that the first assistant should be

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included in this rotation of day watches which actually was -- we had never had this interpretation before.

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MR. OLMAN: I object to the present testimony as

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25 to what he actually --

evidence.)

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THE COURT: Overruled. He said this letter was in relation to a system existing on the vessel for 10 or 15 years?

A Yes, sir. And actually with the first assistant rotating, we tried to do this before because actually it reduced the cost to the ship because it shared the overtime more equally, preventing one person from having to stand for 15 hours in one day which incurred tremendous overtime and possibly up to \$75 a day, and we had a ruling in writing which we thought to be valid.

He also mentioned arbitration, which strictly said in there that the engineers shall have to work one day in each four in port to allow them time off.

This ship was not only in general freight but in oil and usually in port one day and it was a benefit, a financial benefit to us, so in our message when Butler returned we advised him in the letter that we suggested that this be put in hand. It did not say watches had to be broken, watches maintained. The agreement says nothing about watches being broken and they are still being maintained.

What happened after that?

A The next thing we received was a copy of Mr. Gilbert's pay voucher and this disputed overtime sheet which I believe is B.

#### Marshall-direct

- Q Exhibit B in evidence. Where did you receive a copy of the pay voucher from?
- A The captain -- I don't know. Mr. Geiger, the paymaster, received it in the mail from the captain and he brought it to me.

It included various disputes and particularly for confinement and a day watch in excess of eight hours, so we had this and had to negotiate it or settle it.

- Q What happened after you received that?
- A One day in August, mid-August or so --
- Q What year?
- A 1972. I received a letter -- rather, a telephone call from Mr. Colon of MEBA.

He said that he had a claim for penalty -- rather, for overtime and confinement claim for Mr. Gilbert and he requested a meeting.

- Q Did you subsequently have a meeting?
- A On August 22 Mr. Gilbert with Mr. Colon came to our office and we met in the port engineer's office, Mr. Butler. We have two desks and two chairs. He is an exchief engineer and also very knowledgeable in this.
  - Q What was discussed at that meeting?
- A Overtime was started and then almost immediately it went to the first assistant standing day watches.

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The fact that he had stood the day watch during the week day but did not stand the rotation during the weekend.

Marshall-direct

- Q Talking about just port time, Captain, or --
- A No, atrictly port time. When the ship is in port. And we informed Mr. Colon during this five-month period, that is almost the five months Mr. Gilbert was on the ship there were only four weekend days involved in this, four weekend days, so that if the first assistant had stood this watch, it only meant one day, so Mr. Colon appeared embarrassed and he said --

MR. OLMAN: I object to what Mr. Colon said.

THE COURT: Why?

MR. OLMAN: Mr. Colon isn't here.

THE COURT: Mr. Colon, your client talked about going to visit with Mr. Colon.

MR. OLMAN: About statements as to what Mr. Colon said.

THE COURT: You don't want it in? All right.

- Q Don't tell us what Mr. Colon said, just give the substance of the meeting.
- A The substance of the meeting was the fact that only one day which appeared to be eight hours was involved.

It was requested that we forward a list to the

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Marshall-direct

MEBA showing the days in port and watches stood by each man and the watch rotation.

- Incidentally, Mr. Marshall, were Mr. Gilbert's wages discussed at this meeting?
  - Absolutely not.
  - Did you offer Mr. Gilbert his wages?
- I had no idea he had not been paid. No, I did not offer him.
  - What happened after that meeting?
- We prepared a document or list of the watch of the rotation with each man's time and mailed it to Mr. Colon, to the attention of MEBA on August 23, 1972, the very next day.
  - Have you got a copy of that with you?
  - I have.

MR. RYNIKER: Will you mark this, please.

(Defendant's Exhibit K marked for

identification.)

MR. RYNIKER: I offer it in evidence.

MR. OLMAN: I object to it on the ground the best evidence, it is an abstract of the log. I believe they have all the logs here. I haven't compared it.

THE COURT: You may. I will take it.

(Defendant's Exhibit K for identification received in evidence.)

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1	. A 136
1	rp103 Marshall-direct
2	Q What happened after you mailed this letter, Mr.
3	Marshall?
4	A Next we received a letter from the MEBA signed
5	by Mr. Colon as patrolman for the New York branch, and that
6	letter is already here.
7	Q Is that the letter marked Exhibit 10 in evidence?
8	A That is right.
9	Q What happened after that?
10	A Well, in that letter there was absolutely no
11	demand for \$687. The letter says
12	MR. OLMAN: I object to what wasn't in the letter.
13	THE COURT: Sustained.
14	A The letter stated the following claims were being
15	submitted
16	MR. OLMAN: I object to what the letter says.
17	It speaks for itself.
18	THE COURT: I can read the letter.
19	Ω What did you do then?
20	A We sent another letter on September 19 to Mr.
21	Colon saying that his letter
22	MR. RYNIKER: Let me mark this letter.
23	(Defendant's Exhibit L marked for
24	identification.)
25	MR. RYNIKER: I offer it.

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MR. OLMAN: No objection.

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(Defendant's Exhibit L for identification received in evidence.)

Q After you sent that letter, Captain, then what happened?

A We thoroughly reviewed the claim and prepared a six-page answer which was mailed to the MEBA care of Mr. Colon.

MR. OLMAN: I object to that as a self-serving declaration. Their position has --

THE COURT: Overruled. They are entitled to put their position on the record.

MR. RYNIKER: Will you mark this.

(Defendant's Exhibit M received in evidence.)

MR. OLMAN: I withdraw my objection.

THE COURT: That is part of the conference following a representation made by Mr. Colon on behalf of his claimant.

Q What happened after you sent that letter, Captain?

Λ We received another letter from Mr. Colon, including two letters that Mr. Gilbert had written, and we were requested to review the entire grievance.

Marshall-direct

MR. RYNIKER: Let me mark this letter.

MR. OLMAN: Are you going to offer these in evidence?

MR. RYNIKER: Yes.

MR. OLMAN: So that there is no misunderstanding,
I am not concerned with what is in the letter. I think
it is just cluttering up this matter and I don't know what
purpose they are offering it for.

THE COURT: Because your client said the union did nothing for him.

MR. RYNIKER: To show the negotiations of the overtime claim alleged here.

THE COURT: Your client said he got the runaround and nothing happened.

MR. OLMAN: He did go to the union, Mr. Colon wanted to --

THE COURT: I hard all that. Obviously there was a long correspondence belying his statement.

MR. OLMAN: He wasn't satisfied with what the union did or was doing.

THE COURT: No, that isn't what he said. He went to Mr. Colon to see this gentleman and said he never heard from the union again. Obviously they were trying to do something for him. The defendant is entitled to

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show the efforts made.

MR. RYNIKER: I offer the next exhibit in evidence.

(Defendant's Exhibit N received in evidence.)

Q What happened after you received that letter, Captain?

A We, in response to this request to review the entire grievance, we reviewed it, and on January 18, 1973, wrote back and told him we had reviewed it and would be pleased to meet with him at his convenience.

Q Did you have a meeting after that?

A Yes, sir. By telephone we arranged a meeting on March 28, 1973, at which time Mr. Colon came to the office and we met with the port engineer, Mr. Colon and myself.

We spent about three hours reviewing our answers, the log sheets, in tying in each complaint with the logbooks and the agreement at that time we felt we owed Mr. Gilbert nothing.

But Mr. Colon requested that since Mr. Gilbert had stood three hours a night extra on week days on this --

MR. OLMAN: Again I must object to what Mr. Colon did and the witness testifying as to what Mr. Colon said.

As a matter of fact, we have all these letters as to what

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Mr. Colon said going back and forth, which is all before the Court.

Marshall-direct

THE COURT: What did you settle with him. You can't tell us what Mr. Colon told you.

A I won't. But on the basis that Mr. Gilbert had stood three hours more per day for which he received premium pay once or twice, we made a gesture to pay him the two hours premium time each time. The total of the days by count times the \$4.23 an hour came to \$76.14. Mr. Colon authorized that settlement.

THE COURT: He agreed.

A He asked that the check be sent to the office. It was prepared on March 28, and to my knowledge mailed to Mr. Colon at the MEBA headquarters.

THE COURT: All right.

Q Do you know what happened to the check after that?

A I do not. Yes, excuse me. In April I met with Mr. Colon on another ship and he understood that the check was still in his office as well as Mr. Gilbert's pay voucher. He requested that Mr. Gilbert pick it up.

Mr. Marshall, at my request --THE COURT: Strike the last answer to what Colon said.

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#### Marshall-direct

- Q Mr. Marshall, at my request did you review Plaintiff's Exhibit 5 in evidence?
  - A Yes, I did.
- Q What is your estimate of the overtime, if any, due and owing?

A On the basis that this is the third sheet that comes up, strictly on the basis of this, it appears \$50, approximately \$50 because I rounded off the dollars, no problem with Saturdays and Sundays on overtime, satisfactory on this. No problem of Saturday or Sunday in port. No overtime on repairs. Strictly gets down to the port watches during the weekend. That is the only contentions.

- Q How many days involved?
- A A total of 14 days in the five months.

THE COURT: You are telling me that Exhibit 5 differs from what your computation shows is due Mr. Gilbert?

THE WITNESS: Yes, sir.

THE COURT: A difference of \$50?

THE WITNESS: No, approximately \$300. I estimate approximately \$350 and we estimate on this excess of eight hours in various pay scales it is about \$50.

THE COURT: Exhibit 5 claims \$350?

THE WITNESS: Yes, sir.

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109 Marsh	all-direct
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THE COURT: You say he is only entitled to \$50?

THE WITNESS: Approximately.

THE COURT: Over and above the \$76 you have already paid him?

THE WITNESS: No, your Honor, because this exhibit has absolutely nothing whatsoever to do with the two previous claims. There was only one, a subsequent one, and finally this one, and the things that appeared on the others do not even appear on this.

THE COURT: All right.

#### BY MR. RYNIKER:

Q Mr. Marshall, do you have anything to do with negotiating union contracts for your company?

No.

Who negotiates your union contract?

A Basically the negotiations were handled by the major oil companies and major tanker fleet owners in this tanker service committee with the Marine Engineers Beneficial Association.

Once that is done, then it comes to our group of small and very small shipowners and basically in fact we must take exactly what is done because there is a uniform agreement throughout the entire industry.

Q Were you in Yokohama in July, 1972?

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it after 30 days.

- Q He would also mail in to the company copies of pay vouchers issued to various seamen, officers on that vessel, coming and going?
  - A Yes.
  - Q And do it usually in the next port?
  - A Yes, usually.
    - Q What is your position with the company?
  - A I am chief of operations, repairs, crew.
- Q You are also involved in wage disputes with the men and vessel?
- A Yes.
  - Q And pay disputes between the men and vessel?
- 15 A That is correct.
  - Q Mr. Gilbert was discharged from the vessel on May 20, 1972?
  - A Yes.
- 19 Q A copy of the pay voucher would ordinarily be sent 20 to the company at the next port, as you just testified.
- 21 isn't that so?
- 22 A Yes
- 23 Q You had no knowledge that Mr. Gilbert was not paid until three months later?
- 25 A That is absolutely correct.

1	rp114	Marshall-cross
2	Q	And the paymaster didn't advise you?
3	A	That is correct.
4	Q	No one advised you?
5	A	No.
6	Q	Just ignored it?
7		THE COURT: No.
8	A	I don't ignore it. If there is no problem, I am
9	not advise	ed. There is no problem.
10		THE COURT: He wasn't told.
11		THE WITNESS: I was advised of the overtime dis-
12	pute.	
13	Q	The paymaster didn't come to you and tell you
14	that Mr. (	Gilbert wasn't paid when he left the vessel?
15	A	No.
16	Q	When did you finally find out that Mr. Gilbert
17	was not pa	nid?
18	A	Possibly toward the end of the year.
19	Q	End of the year?
20	Λ	Possibly.
21	Q	How did that come about?
22	A	I have no recollection. Probably the conver-
23	sation wit	th Mr. Colon, but I had no direct recollection.
24	Q	No one in the shipping company brought it to
25	your atter	ntion?

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#### Marshall-cross

A No.

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Q The paymaster must have known about it.

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Would the paymaster have known about it?

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A I would think at some point, yes.

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Q At what point?

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THE COURT: Ask the paymaster, he is here in

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court. It is not his job.

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MR. OLMAN: Captain Marshall is involved in wage

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disputes.

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THE COURT: But if you want to know if the pay-

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master knew about Cilbert, ask the paymaster. You had him

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on the stand.

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Q Now, you sent the check to the union for \$76.14 on March 28, 1973, with respect to what you say is over-

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time --

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A I think we sent it to Mr. Gilbert in care of the

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union or Mr. Colon with Mr. Gilbert's name on it.

You mailed the check, right?

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A Yes.

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Q Incidentally, after you found out that Mr.

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Gilbert was not paid his wages, did you mail a check to

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Mr. Gilbert or to the union or anyone?

A No, positively not.

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THE COURT: Why not?

#### Marshall-cross

THE WITNESS: Because again, your Honor, the
man must present himself to the office, at which time the
paymaster gives him a letter to the Shipping Commissioner
giving the date the man signed on, signed off, the two
ports, and ordinarily the reason, which isn't necessary.

The man takes that to the Shipping Commissioner and gets a certificate of mutual release and brings it back and then the paymaster will have the check drawn.

Q Captain, are you familiar as captain with the basic law of the sea that a seaman is entitled to full pay upon discharge or within four days after discharge?

MR. RYNIKER: Objection.

THE COURT: Overruled.

- A I fully agree he is entitled to wages.
- Q Are you saying that your company policy is in violation of this law?
  - A No, I certainly don't say it is.
- Q But you are telling us that the man can't be paid until he comes to New York, the office?
  - A Absolutely not.

THE COURT: He didn't ask for it. It is their defense he didn't ask for it, he didn't want it.

MR. OLMAN: That is no defense that he didn't want it, your Honor.

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THE COURT: He asked for \$2000 and the balance in a pay voucher.

MR. OLMAN: That is correct. But there has been no testimony, only by the defendant, other than the fact that he did not ask for it at that time.

THE COURT: He asked for \$2000 and a pay voucher. That is what he asked for. That is what the captain says he asked for. You didn't even cross-examine the captain on that issue.

Q Captain Marshall, is there any reason you can tell why Mr. Gilbert hasn't been paid his pay until today? THE COURT: Yes, we went over that. He didn't go and get it.

- Anything to prevent the company from taking --
- A Yes.

THE COURT: He testified to that.

THE WITNESS: The paymaster testified to it.

- Q Did Mr. Gilbert come down and sign any papers for the \$67 check mailed to the union?
  - A That is not his wages.
- Q I am asking you whether Mr. Gilbert had come down and signed any papers for that \$76?
  - No.
  - He was able to get that \$76? Q

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THE COURT: Mr. Olman, that was a negotiation through the union. You don't need a Shipping Commissioner for that.

Q Is it your sole position, Captain Marshall, that
Mr. Gilbert was not paid because he didn't ask for it?

A Yes.

THE COURT: No, sir, that is not his position.

MR. OLMAN: The witness just testified.

THE COURT: The captain was the one who was there, he wasn't there. The captain said that he asked for his pay in \$2000 cash plus a voucher, and the captain gave it to him. That is the story.

MR. OLMAN: This is the defendant's story?

THE COURT: That is right. So I ask this witness, what the position is.

MR. OLMAN: There was testimony by the plaintiff that at one of the meetings with Mr. Colon that Mr. Gilbert asked for his pay and was flatly refused by Mr. Marshall. He said he started to talk about pay and Colon stopped him, told him to shut up, they were talking about vacation pay.

THE COURT: That is what the testimony is.

MR. OLMAN: I have no further questions.

MR. RYNIKER: The defendant rests, your Honor.

(Witness excused.)

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MR. OLMAN: I would like to ask Mr. Gilbert one question in rebuttal.

THE COUR Go ahead.

JOHN T. GILBERT, recalled in rebuttal,

testified further as follows:

## DIRECT EXAMINATION

### BY MR. OLMAN:

Q Mr. Gilbert, when you testified before that the union did nothing for you, what do you mean by that?

MR. RYNIKER: I object to that.

THE COURT: Overruled.

A I did not mean that the union did not do anything for me.

THE COURT: He never heard from them.

Q That was your testimony, that you never heard from the union?

A From when?

Q From the time you went with Mr. Colon to see Mr. Marshall.

A After that I wrote, typed up a letter and presented it to Mr. Colon up at the MEBA demanding all my wages and Mr. Colon kept the letter for several days and we went back to the union hall again, he gave my letter back to me and he evidently did nothing about it. But Mr. Colon in

#### Gilbert-direct

the letter of September 5 about the overtime, he went down
to see Captain Marshall about this, said I had \$350-some
coming according to the union rules and regulations but
I was only offered \$76 by the company, whereas, as I said,
Mr. Colon said in the letter of September 5 I had \$350-some
coming. That is what I meant by that.

I didn't say that the union did nothing for me.

The union tried to get the \$50 because they said I had that coming according to the union rules and regulations.

MR. OLMAN: I have no other questions.

THE COURT: All right, you are excused.

(Witness excused.)

THE COURT: Now, what are the claims in this case?

MR. OLMAN: We are claiming the agreed earned wages in the sum of \$5121.19.

THE COURT: That is agreed. What else with respect to count 1?

MR. OLMAN: We are requesting one day's pay for the 144 days testified to, whereas --

THE COURT: You conceded that, have you not?

MR. RYNIKER: One travel day, your Honor, not an additional day's wages.

MR. OLMAN: There is an additional day's wages.

THE COURT: How do you figure that?

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MR. OLMAN: Under the testimony of the man worked by the calendar month from 12/28/71 to 5/23/72, and you have four months and 24 days, not four months and 23 days.

THE COURT: What about that?

MR. RYNIKER: The paymaster testified he worked four months and 23 days, your Honor.

MR. OLMAN: That can be added up on the calendar.

THE COURT: Both of you can agree on that.

MR. OLMAN: One day's wages plus \$10 subsistence and one day's wages under --

THE COURT: One day's travel time.

MR. OLMAN: One day's wages for travel time plus \$10 subsistence, which is \$46.56.

THE COURT: You agree to this?

MR. RYNIKER: I am agreeable to that.

THE COURT: \$46.56.

MR. OLMAN: We are asking for one day's wages at overtime rates for discharge before the relief came aboard the vessel.

In this respect I refer you to Plaintiff's Exhibit 10 in evidence, which is also the union position in the union letter to the defendant where they say improper relief of the American Eagle -- I am arguing on Section, I believe, 793, dealing with watches being divided by three

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men. If there isn't three watch standers on the vessel it would be a violation of law to have one man leave the vessel before he is relieved by another man, otherwise --

MR. RYNIKER: The vessel had four engineers.

MR. OLMAN: The first engineer was not watch standing and the chief engineer is not a watch stander.

THE COURT: Count 1.

MR. OLMAN: That is the overtime rate because it was a Sunday, which would be \$112.48. I am not sure what the Court means by count 1. I have an itemized list.

THE COURT: I have a complaint.

MR. OLMAN: That would be what we are asking under the failure to pay overtime, premium time and confinement time.

THE COURT: Count 1 now?

MR. OLMAN: Yes, count 1.

We are claiming \$354.99 due and owing for the combination of overtime, premium rate hours and confinement hours as per Plaintiff's Exhibit 5.

THE COURT: That is in addition to the \$76 which he received?

MR. RYNIKER: I believe it excludes that, your Honor.

MR. OLMAN: No, that is inclusive of the \$76

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difference to us.

which he received. However, that check is long outdated unless the company will honor it. It doesn't make any

THE COURT: How do you want to handle it?

MR. RYNIKER: I don't understand this.

THE COURT: He says that the \$354.99 includes the \$76.14. Why not give the whole thing because he never cashed the check.

MR. RYNIKER: If you award him that, we will take the check back and issue a new check.

THE COURT: All right.

MR. OLMAN: And we are asking for double wages, that is, two days' wages for each day that the agreed earnings have not been paid through July 23, 1973, at a rate of \$73.72 per day.

THE COURT: Double wages from what?

MR. OLMAN: May 20 -- May 24, four days after discharge, 1972, through July 11, 1973, which is the date of the defendant's letter, Defendant's Exhibit F in evidence.

THE COURT: Totalling how much?

MR. OLMAN: May I have a moment on this? I have a calculator here.

It comes to \$32,436.80.

We will rest on the contention that he didn't ask for it.

THE COURT: You rest on the contention that he never asked for his wages, therefore he can't get the interest on the vacation benefits.

MR. RYNIKER: That is right.

MR. OLMAN: That amount I calculate as \$294.02.

Further requesting an award of one month's pay, which is \$1096.94 by reason of the defendant's failure to take the plaintiff to the American Consul office either in Dahrahn or Bahrain.

Further requesting --

THE COURT: Doesn't the union contract take care of this dispute?

MR. OLMAN: The union contract defines what overtime and confinement time and premium time is. The union contract does not take care of the disputed items.

THE COURT: But there is no obligation on behalf of the union to do anything. After going through all the correspondence they figured that \$76 was all he is entitled to.

MR. RYNIKER: That is my position.

THE COURT: What is this about going to the consular office?

MR. OLMAN: The basis of the consular office was,

one, he was entitled to discharge before, to make any complaint he had.

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MR. RYNIKER: The statute doesn't say that.

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THE COURT: I am listening to his argument.

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MP. OLMAN: He was entitled to all his wages on discharge, which they failed to pay. He was improperly

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discharged by reason of the relief not being there.

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THE COURT: That isn't what he said on the stand.

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MR. OLMAN: My recollection of his testimony is

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that he wanted to see the consular officer upon his dis-

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THE COURT: Period. And the captain says he

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wanted to see the consular officer on discharge for his

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overtime.

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MR. OLMAN: I can't recollect exactly plaintiff's testimony on that.

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THE COURT: Well, I will go back to my notes.

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He said he wanted to see the consular officer.

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Nothing in my notes, he wanted to see the consular officer.

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MR. OLMAN: My recollection was that he stated

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his reasons for wanting to be discharged before a consular

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officer, in addition to the fact that he was disputed

overtime, but the fact --

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THE COURT: You are telling me there is a duty

to get the Shipping Commissioner's signature on the discharge.

MR. OLMAN: The testimony of the paymaster is totally contrary to the well-settled law of 46 U.S. 596 that a seaman is entitled to pay within four days after discharge unless the defendant can show reasonable cause for failure to pay and they are liable for double wages as well.

THE COURT: Actually he was sitting in New York ten months running up rent bills, food bills, and never had gone down and said, "Give me my wages."

MR. OLMAN: I am not saying that --

THE COURT: Mr. Colon said there was no discussion of any wages. Your own client said that Colon said, "Keep quiet, we are here on vacation time."

Mr. Marshall said they started off on overtime and subsequently went to the problem of sitches, which I gather is what really griped the plaintiff here. It is inconceivable to me that the company just refused to give him his wages. For what purpose?

MR. OLMAN: What is more inconceivable, your Honor, is the contention of the company that they offered him wages.

THE COURT: There is a letter here at least of

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last July, he never went down to get the money, and that was something like 16 months ago.

MR. OLMAN: That is correct, that is the first time.

THE COURT: But at no time did he do anything.

I am led to believe he never intended to do anything. Here you get a letter from the attorney telling you to come down, the wages are there, and he doesn't move.

MR. OLMAN: But we got to bear in mind we are dealing with a seaman who starts his action pro se and after the action was commenced, then they get around to say --

THE COURT: Why don't he go down and get the money if he is so hard up?

MR. OLMAN: It would prejudice -- we have \$5000 due --

THE COURT: What do you mean prejudice any other claim you have? Come and get your money.

MR. RYNIKER: With a carbon copy to your Honor.

MR. OLMAN: The plaintiff testified then he was in litigation and I don't know whether he knew that he could take the money or not take it at this point.

THE COURT: There is no question as to any time before he commenced his action.

MR. OLMAN: But we are dealing with a seaman.

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He ever refers to the fact that he claims he is hard up and needs money.

MR. OLMAN: That is right.

THE COURT: If this man is very hard up he isn't going to go down for a half-hour and try to get himself \$5000?

MR. OLMAN: I believe he left it might have injured his action, and apparently he went to a great deal of work and study, and I have copies of all his research, what he did, and I firmly believe that he felt that this would somehow destroy his action and at that point I don't think he wanted to have it destroyed.

THE COURT: Go ahead.

MR. OLMAN: The reason he worked for the union company was to get paid and he had been paid up to that time.

THE COURT: He said on direct examination, and you seem to forget it, he said he came to New York in July of 1972 in order to be in court on another matter. is several months after he left the ship.

Of course, instead of coming back to New York where he is supposed to come, he decided to go to Yokohama and sit there a while before he comes here and stops off in San Francisco and Reno on his own business.

He finally shows up when he feels like showing

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up and he says that he went to the union but he 'idn't get any help, that is July of 1972. Those are his words.

Then he went to see Mr. Marshall in early 1972, and thereafter he wrote to the union but he wasn't happy.

The correspondence belies those statements.

MR. OLMAN: They weren't helping to his satisfaction, apparently.

THE COURT: He says he got the answer, they wouldn't help him.

MR. OLMAN: The letters are in evidence.

THE COURT: Two visits by Mr. Colon on his behalf to the defendant.

MR. OLMAN: But on the other hand, they weren't satisfying him because apparently according to him, and I can't disagree with him based on the work I put in on it, the union was saying, "We will take your \$76, and that is good enough, let's go."

THE COURT: Do you mean to say, he told the union that they owed \$5000 in earned wages and he asked for it on the ship and they refused to give it to me and I went to the agent in Yokohama, Japan, and asked, and they refused to give it to me, and the union said to him, Forget the wages, too"?

MR. OLMAN: No, I am not saying that, your Honor.

I am not making that claim at all.

THE COURT: You wouldn't even tell him to go down and get the money? Wouldn't make a telephone call to find out why this money was being held up from a defendant who would be subject to double wages for every month he didn't pay?

MR. OLMAN: I can't answer for the union because there is nobody from the union here to testif. Either I didn't bring them or my adversary --

THE COURT: That is not his job, it is your job to prove your case. It is not the defendant's job to disprove it.

MR. OLMAN. Your Honor, we have a seaman discharged from a vessel, why didn't they send him a check any time? Why didn't they send the check whether he asked for it or not. Like any other person at work, they either go to the paymaster to get paid or they send you a check. Here, this company writes a letter, "Come on in, and without prejudice we will pay you." This company knew its liability.

a man who is owed over \$5000 in wages goes to his union and speaks about \$354 of overtime, premium rate and confinement and doesn't mention \$5000 of wages; absolutely incomprehensible to me that if he did tell the union

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they didn't at least pick up the telephone and cell and say, "You owe this fellow \$5000, you are running up a bill at double wages every month you don't pay him." It is incomprehensible.

Colon it was your duty to produce but not his, because you have to prove your case. He doesn't.

MR. OLMAN: As incomprehensible is the company realizing that it is running up a bill like that each day doesn't put in the mail a check like they did --

THE COURT: Because it seems very likely from the master's story he didn't want it and the voucher is there, come pick it up.

MR. OLMAN: They give the voucher, your Honor --THE COURT: Don't you understand this defendant's story? You are trying to say it is incomprehensible? The defendant's story is that he came in and that is the way he wanted to get paid and they paid him the way he wanted to get paid and the rest of it is up to him to do. That is their story. I am saying that isn't true, to believe that a man speaking to his union for \$354.99 and doesn't speak about \$5000 is incomprehensible.

What else do you want? Expenses of \$4862 sitting here in New York for a year.

MR. OLMAN: The next is this overtime, his

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\$5000 without prejudice.

THE COURT: Why should a defendant run up the possibility of double wages?

MR. RYNIKER: That they paid the taxes on.

MR. OLMAN: The same logic why a plaintiff would not take \$5000 that he earned. They have a tremendous wage dispute going on with this man, not only a tremendous wage dispute but they finally modified their entire watchstanding procedures on that ship after Mr. Gilbert put pressure on them.

THE COURT: The big \$554 matter was solved.

If I were plaintiff I would yell for the \$5000 right away and wouldn't worry about the \$554. I wouldn't go to a conference and walk away without having some explanation as to why I didn't get the money in front of the union representative.

The union representative goes back and sends him a lengthy correspondence for \$354 and never mentions the \$5000, never once.

It seems to me he would forget the \$354 and get the \$5000 and run home to Yokohama instead of sitting here for a whole year. He went back twice for the \$354.

What else do you claim?

MR. OLMAN: I can't dispute that logic, your

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THE COURT: They didn't do any work, they all agreed and he worked all the overtime.

MR. OLMAN: This is because of the way the watch was set up in port because Mr. Gilbert was relief.

We have a number of engineers that have been on the ship steady for years and, your Honor, I might point out that it is not easy to get somebody working on a ship out there.

This ship lives in the gulf --

MR. RYNIKER: That is outside the record.

THE COURT: That takes care of your items of damage, right?

MR. OLMAN: Yes, your Honor.

THE COURT: I only want a brief on one point and that is the responsibility of the master to take a seaman to a consular office, okay? Case submitted. Next Tuesday.

MR. OLMAN: On this point, your Honor, the remarks made by your Honor in the Court's decision on the motion to dismiss various causes of action is the law to date.

THE COURT: I want you and your opponent to give

me a brief as to the responsibility of the master to take a

discharged seaman to a consular office. Of course, particular
ly geared into the facts of this case as you have now heard

them. Today is Friday, the brief is due -- I will give you

to next Friday, December 13, 1974. Everything else is a

question of fact as I see it.

Have you worked on this 143 or 144?

I have two more matters to dispose of today.

(Recess.)

MR. OLMAN: Your Honor, with respect to that one day's wages, rather than fight over it, we decided if there is an award to split it in half.

THE COURT: An award of the half day, that solves it.

MR. OLMAN: With reference to the request that in addition to your Honor's requirement to submit a brief on the point of the seaman being taken to an American consul, I will submit a brief on the applicable law with respect to the shipowner's obligation to pay the seaman because the plaintiff's position is a mixed question of fact and law that is simply that the burden is not upon the seaman to demand his wages but the burden is upon the shipowner to make payment of wages. There has been no evidence here at any time that the defendant ever offered him his wages.

THE COURT: Mr. Olman, the testimony from the defendant's point of view is that when it came to discharge, the plaintiff asked for \$2000 cash and took a voucher for the rest, right?

MR. OLMAN: Yes, your Honor.

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The plaintiff's position, of course, is contrary to that which is being presented by the defendant, that he did demand the wages.

THE COURT: Obviously, otherwise there would be no lawsuit.

MR. OLMAN: He demanded again and again and again and he was refused it.

THE COURT: Why should they refuse it? In front of a union representative or a witness now, now there is Mr. Gilbert and the captain and Mr. Gilbert and the marshal for the first time and he got a third party present.

MR. OLMAN: That is precisely my point, what you are saying is why should the defendant refuse to pay. The defendant has never offered. The burden of proof is upon the defendant to show good cause why he failed to pay him.

MR. RYNIKER: There is no failure, your Honor.

THE COURT: They say they gave it to him the way he wanted it. He never cashed the \$76 check he got a year ago. He never cashed that either. They put in a withholding statement and he paid Uncle Sam the withholding tax and the money, didn't they? They report what they owe the man and he didn't pick it up when offered the wages. They paid the withholding on it.

MR. OLMAN: The testimony is that they sent any

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withholding statement that they paid this man and only when the IRS made an inquiry did they say, "Oh, my, we still owe him this money."

THE COURT: But they paid the withholding taxes on it.

MR. OLMAN: There is no dispute on that.

THE COURT: All right.

MR. OLMAN: The only point I was making to the Court is that the real burden lies with the defendant to show why they didn't pay him rather than the burden of the plaintiff to show why the defendant didn't pay him.

THE COURT: They take the position that they offered to pay him, that is the way he took it. Isn't that true?

MR. RYNIKER: That is not only my position but we take the position that we paid him. The voucher was what he wanted. He was paid on the ship.

THE COURT: That voucher isn't payment. The voucher is merely what you owe.

MR. RYNIKER: We paid him what he wanted.

THE COURT: You gave payment in the form that he liked to have it but it wasn't payment the way a check would be considered payment. It is a piece of paper and there still had to be a check issued on it. All right.

MR. OLMAN: That is not the fact.

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rpl45a THE COURT: I have people waiting for me here. It is now 5 o'clock. MR. OLMAN: Just one thing, the law is contrary, that even a check wouldn't suffice as payment to a seaman. (Closed.) 

# PLAINTIFF'S EXHIBIT 1

# CERTIFICATE OF DISCHARGE

TREASURY DEPARTMENT UNITED STATES COAST GUARD  OF CErtificate of Discharge  in Allerchant Seamon  Man completed vacations of Seamons  (Master of Vessel)  I HEREBY CERTIFY that the above entries were made by me and are correct and that the signatures hereto were witnessed by me.  Dated this 20 day of May , 1972  United States Shipping Commissiones.  (or Master of Vessel)  Note—Whenever a moster performs the duties of the shipping commissioner under this act, the master shall sign the certification on the line designated for the shipping commissioner under this act, the master shall sign the certification on the line designated for the shipping commis-	Name of Seaman John Theodore GILBERT  (In full)  Citizenship US  U. S. Merchant Mariners Document No. z 263469  Rating  2nd Engineer (Capacity in which employed)  Date of Shipment  12-28-71  Place of Shipment  New York, NY  Date of Discharge  5-20-72  Place of Discharge Rastanura, Saudi, Arabia  Name of Ship AMERICAN EAGIE  Name of Employer AMERICAN EAGLE TANKER CORP  Official No. 278327  Class of Vessel Steam (Steam, Moloc, Sail of Barge)
Note—Whenever a moster performs the duties of the shipping  o commissioner under this act, the master shall sign the cer-	Official No. 278327 Class of Vessel Steam (Steam. Motor, Sail or Barge)  Nature of Voyage foreign, Intercoastal or Coastwise)

# PLAINTIFF'S EXHIBIT 2

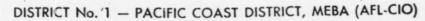
# WAGE VOUCHER

AMERICAN EAGLE TANKER C	ORP.
MERICAN EAGLE TANKER C  80 BROAD STREET, NEW YORK 4, N. Y.	
7/38/73-AP	Voucher No. 7 B of 147
S. S. AMERICAN EAGLE Voy. No.147 Port of Rastanur	a Date 5-20-72
Name John Theodore GILBERT Rating 2nd Eng W4 Status M-2	Soc. Sec. No. 555-28-8160
Name	
WAGES From 12-28-71 to 5-20-72 4 mos. 23 days @ \$ 1096.94 per me	s 5228.75
From 12=20=71 to 7=20=72 4 mos. = 2 days & \$ -2 = 7 per mos.	
From to mos days @ \$ per mos from days @ \$ per mos days @ \$ per mos mos.	\$ 5228.75
AREA BONUS	
From	per day \$
EXPLOSIVE AND OTHER BONUSES	
From	per mo. \$
OVERMINE	
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05 hours 0 \$ 1, 23 per hour 274, 95	
12 5.26 63.12	7771071
TOTAL EARNED SUBJECT	T. TO INCOME TAXES \$ 10,700,700
U. S. Shipping Commissioner FOR F. I. C. A. TAX PURPOSI	ES ONLY
TOTAL EARNED	<b>\$</b>
Board and Lodging 145 days @ \$1.	60er day 232.00
Subsistence and Lodging Ashore days @ \$	per day
Subsistence and Lodging Ashore	C. A. TAX \$ 11,018.32
ADD Subsistence Ashore—Fromtodays @ \$	
Lodging Ashore—From days @ \$	per day \$
4. HT	. 10.00
Transportation, because of the second	TOTAL AMOUNT DUE \$ 10,796.32
N.R.A. TAX COMPILATION—Citizen/Subject of	
Total Earned For Voy. \$Per cent of Voy. in U.S.A%	
Amount Earned fordays in U. S. Territorial Waters\$	
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AMOUNT SUBJECT TO TAXES\$	
DEDUCTIONS	. 2200 00
Advances	\$ <u>3200.</u> 00
Slop Chest	0 .
Allotments	0
Fines	1971.58
Withholding Tax For 142 days on \$ 10780.32(Per Official Wage I	468.00 (max)
F.I.C.A. Tax 5.2 % of \$ 11,018.32	OTAL DEDUCTIONS \$ 5675.13
	BALANCE DUE \$ 5121.19
EXIENSIONS AND ADDITIONS CHECKED	
NY	ENT IN FULL FOR ALL SERVICES STATED ANOVE
I certify that this pay coucher is true and correct that the person named her on was employed and has restormed the services for the person as sasted above, and that the prison whose name appears on this pay voucher is enti-	
· i o the amount of the stated above for him.	
· / h koeners	Employee's Signature
Master (or other authorized appresentative)	Employee's Orginature ;

#### PLAINTIFF'S EXHIBIT 10

#### LETTER DATED SEPTEMBER 5, 1972

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001



J. M. CALHOON PRESIDENT

C. A. BLACK , EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

:=

I. A. LAMY, VICE PRESIDENT, ATLANTIC COAST

C. E. DIFRIES, VICE PRESIDENT, GULF COAST

Sept. 5, 1972

1/91/13. No

Capt. H. W. Marshal American Foreign Steamship Co. 80 Broad Street New York, N.Y. ,10004

> Reference: Disputed overtime of J. T. Gilbert, Relief Second Asst. Engr. S/S American Eagle

Dear Capt. Marshal:

In reference to our discussion and your letter of Aug. 23, 1972, the following claims are submitted for your review and approval.

Relief 2nd Asst. Engr. J. T. Gilbert was forced to stand an additional 3 hours Night Watch at \$4.23 per hour and divide it with the other 2 watch standing engineers. Mr. Gilbert should be made whole in every suchinstance by being paid back two hours at \$4.23

Thursday 12/30/72-1700 - 2000 Gilbert (2 hrs. at \$4.23 - \$8.46 

\*Mr. Gilbert claims that he stood the 1700 \$101.52 to 2000 watch on 1/19/72 and that it can be substantiated by the engine room rough log.

\*\*Mr. Gilbert supplied the names of the engineers who stood watches on these dates.

The day watch sequence onboard the S/S American Eagle from 12/29/71 through 5/20/72 should have been as follows:

1. Gilbert 2 A/E 2. Norman 3 A/E

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3. Oliferowitch 3 A/E

4. Paul 1 A/E I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-2001

# DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON
PRESIDENT

C. A. BLACK
EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

::

I. A. LAMY, VICE PRESIDENT, ATLANTIC COAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Capt. H. W. Marshal

Page Two

Sept. 5, 1972

Wednesday 12/29/71 Ras Tanura 0800 - 2000 Paul 1 A/E day watch Gilbert didn't work, in transit to vessel.

Thursday - 12/30/71 - Ras Tanura 0400 thru 2000 Gilbert day watch 0400 to 0800 - 4 hours at \$4.23 (NIGHT WATCH)	\$16.92
0800 to 1300 - day watch not in excess 8 hrs. 0 1300 to 2000 - 7 hrs. 0.T. in excess 8 hrs. (0.T. is \$9.49)	\$66.43
Gilbert should have been paid Gilbert overtime sheet was approved for the following Watch hours.	\$83.35

12/20/71	lowing Watch 0500 to 080 1700 to 190 1300 to 170 1700 to 200	) - 5 hrs. ) - 4 hrs.	at \$4.23 at \$9.49 (Excess 8 hrs. \$9.49-\$4.23) \$5.26	\$21.15 37.96 15.78
			49.49-44.23) \$7.20	2,,,,

Gilbert's O.T. sheet was credited with -- \$74.89

#2. Gilbert is owed \$8.46 for 12/30/71

Tuesday - 1/18/72 Yokosuka

0800 to 1700 Norman day watch 0

Gilbert worked the following watch hours
0400 to 0800 Sea Watch (0448 Arrival SBE)

(F.W.E. 0606 ) 2 hrs. \$4.23 \$ 8.46

1700 to 2000 Port Watch 3 hrs. \$4.23 \$12.69

Gilbert's overtime sheet wasn't credited with anything

#3 Gilbert is owed \$21.15 for 1/18/72

Wednesday - 1/19/72 - Yokosuka

43.

0800 to 1700 - Olifercwitch day watch D
Gilbert worked the following hours:
0400 to 0800 - 4 night watch at 44.23 --- \$16.92
1700 to 2000\* - 3 Night watch at 42 --- \$12.69

Gilbert should of been paid

\$29.61

#### Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

#### DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON
PRESIDENT

C. A. BLACK
EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

A. LAMY, VICE PRESIDENT, ATLANTIC CHAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Capt. H. W. Marshal

Page Three

Sept. 5,1972

Gilbert's overtime sheet was approved for the following watch hours:

0400 to 0800 - 4 hours at \$4.23 1700 to 2400 - 7 hours at \$4.23

--\$16.92 --\$29.61

\$46.53

Note: Your Aug. 23, 1972 letter indicates that Oliferowitch was on watch from 0800 to 2400.

#4 Gilbert was credited with an overpayment of \$16.,2

Thursday - 1/20/72 Yokosuka

0800 to 1200 Paul day watch D 1200 to 1600 Norman ? Gilbert worked the following watch hours:

0400 to 0800 - 4 night watch at \$4.23 Gilbert's overtime sheet was approved for the following hours:

--\$16.92

None

#5 Gilbert is owed \$16.92 for 1/20/72

Sunday - 2/6/72 - Ras Tanura

Gilbert turn on day watch (0800 to 1700) and forced to remain on sea watches even though vessel was in port until Wednesday 2/9/72.

Vessel arrived & S.B.E. was 0848 and F.W.E. was 1054 on 2/6/72. Port Time would have commenced 30min. after it has anchored or moored (first line) at a port or approximately 1124 on 2/9/72. Gilbert should have worked from 1124 to 1700 and been off the rest of theday. Gilbert therefore would of been entitled to overtime from 1124 to 1700 or 6 additional hours of overtime (19.49).

Gilbert was forced to remain on sea watches and accredited with 8 hours overtime(\$9.49) for the 0400 to 0800 and the 1600 to 2000 watches on Sunday 2/6/72.

#6 Gilbert is owed \$56.94 for 2/6/72

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

## DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON PRESIDENT

C. A. BLACK EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

1. 4. LAMY, VICE PRESIDENT, ATLANTIC COAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Capt. H. W. Marshal

Page Four

Sept. 5, 1972

Monday - 2/7/72 - Ras Tanura

Norman's turn on day watch. Gilbert's hours of work are as follows:

0400 to 0800 - 4 hours night watch at \$4.23 0800 to 1300 - 4 hours Overtime at \$9.49 --\$16.92 --\$37.96

Improper turn on day watch in port
1300 to 2000 - 7 hours overtime in excess of 8 hours - \$75.92

\$ 130.80

Gilbert was credited with the following hours:

1300 to 1700 - 4 hours at 49.49 1700 to 2000 4 3 hours at \$5.26 (49.49 - \$4.23)

\$ 37.96 \$15 .78

\$53.74

Gilbert overtime sheet was credited with \$53.74

#7 Gilbert is owed \$77.06 for 2/7/72

Tuesday - 2/8/72 - Ras Tanura

Oliferowitch turn on day watch) Norm works 0800 to 1700 Gilbert hours of work are as follows:

0400 to 0800 - 4 hours night watch at \$4.23 1700 to 2000 - 3 hours night watch at \$4.23

-- \$16.92 -- \$12.69

\$29.61

Gilbert overtime sheet was credited

with the following watch hours: 0000 to 0300 - 3 hours at \$4.23 2200 to 2400 - 2 hours at \$4.23

-- \$12.69 8.46

\$21.15

#8 Gilbert is owed \$8.46 for 2/8/72 .

43.

#### Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

#### DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON PRESIDENT

C. A. BLACK
EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

I. A. LAMY, VICE PHESIDENT, ATLANTIC COAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Affiliated with AFL-CIO

Capt. H. W. Marshal

Page Five

Sept. 5,1972

Saturday - 2/26/72 - Sasebo

Paul's turn on day watch Gilbert's hours of work are as follows:

0400 to 0800 - 4 hours at \$9.49 1600 to 2000 - 4 hours at \$9.49 --\$37.96 --\$37.96

\$75.92

Gilbert overtime sheet was accredited with the following watch hours:

0400 to 0800 ) 8 hours a 1.49 1600 to 2000 )

\$75.92

Sea watches in port (2/26/72 thru 2/28/72) over a weekend.

#9 Gilbert was given proper credit on his overtime sheet.

Sunday - 2/27/72 Sasebo

Gilbert turn on day watch 0 Oliferowitch worked day watch 0800 to 1700

Gilbert should have worked the day waten which would have entitled him to an additional 8 hours overtime at \$9.49 --\$75.92

Gilbert's overtime sheet was credited with the following watch hours:

0400 to 0800 - 4 hours at 49.49 1600 to 2000 - 4 hours at 49.49 \$37.96 \$37.96

\$75.92

#10 Gilbert is owed \$75.92 for 2/27/72

Monday 2/28/72 - Sasebo

Norman turn on day watch D Oliferowitch works 0800 to 1200 (0830 all cargo discharged & S B.E. at 1300)

Gilbert works 0400 to 0800

Note Oliferowitch & Norman have made some arrangements concerning watches among themselves.

#### Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

# DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON PRESIDENT

C. A. BLACK EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

I. A. LAMY, VICE PRESIDENT. ATLANTIC COAST

C. E. DEFRIES. VICE PRESIDENT, GULF COAST

-

Capt. H.W. Marshal

Page Six

Sept. 5, 1972

Gilbert overtime sheet is credited with 3 hours night watch (0500 to 0800)

Gilbert should have been accredited with 4 hours night watch ---\$16.92 at 54.23

#11 Gilbert is owed \$4.23 for 2/28/72

Wednesday - 3/15/72 - Bahrain

Oliferowitch turn on day watch Paul works day watch 0800 to 1700 Gilbert worked the following hours:

0400 to 0800 - 4 hours night watch at \$4.23 1700 to 2000 - 3 hours night watch at \$4.23

--\$16.92 --\$12.69

\$29.61 - 12.69

Gilbert overtime sheet wasn't accredited with any night watch hours. #12 Gilbert is owed \$29.61 for 3/15/72

Thursday - 3/16/72 - Bahrain

Paul turn on day watch 0800 to 1700 D Gilbert worked from 0400 to 2000 Gilbert should have been paid the following for the above hours worked.

0400 to 0800 - 4 hours night watch at \$4.23 0800 to 1300 - 4 hours at \$9.49 (Improper day watch turn)
1300 to 2000 - (7 hours in excess 8 hours)
at \$9.49

\$121.31

--\$16.92

--37. 96

--66.43

Gilbert overtime sheet was accredited with the following hours:

0000 to 0800 - 8 hours night watch at \$4.23 1300 to 0700 - 4 hours excess of 8 at \$9.49 1700 to 2000 - 3 hours Excess of 8 hrs. --\$33.84 --\$37.96 Night watch at \$5.26 --\$15.78

(\$9.49-\$4.23)

\$87.58

#### Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

# DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON
PRESIDENT

C. A. BLACK EXECUTIVE VICE PRESIDENT LEON SHAPIRO SECRETARY-TREASURER

I. A. LAMY, VICE PRESIDENT, ATLANTIC COART

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Capt. H.. W. Marshal

PAGE Seven

Sept. 5, 1972

#13 Gilbert is owed £33.73 for 3/16/72

Friday - 3/17/72 - Bahrain

Gilbert turn on day watch 0800 to 1700 Norman works day watch 0800 to 1700 Gilbert worked the following hours:

0400 to 0800 - 4 hours night watch at \$4.23 1700 to 2000 - 3 hours night watch at \$4.23 --\$16.92 --\$12.69

\$29.61

Gilbert overtime sheet was credited with the following Watch hours.

0000 to 0500 ) 8 hours night watch at \$4.23

--\$33.84

1700 to 2000 )

1600 to 1700 - 1 hour excess of 8 at \$9.49

Note: The 1600 to 1700 hour was above the normal hours of labor and not claimed as part of the regular port watch.

#14 Gilbert overtime sheet was over credited by \$4.23

Friday - 4/14/72 - Rota

Norman turn on day watch 0800 to 1700 D Oliferowitch works 0800 to 1700

Gilbert worked the following hours:

84.23 1700 to 2000 - 3 hours night watch at \$4.23 --\$16.92 --\$12.69

of forovitch Reeps fulling down O.T. before Part Find State \$29.

If I hept was a my own Port Time this wouldn't have happened.

Gilbert overtime sheet wasn't credited with anything on 4/14/72.

#15 Gilbert is owed \$29.61 for 4/14/72

Saturday - 4/15/72 - Rota

Oliferowitch turn on day watch Paul works day watch 0800-1700 Gilbert worked the following hours:

## Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

# DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON PRESIDENT C. A. BLACK EXECUTIVE VICE PRESIDENT LEON SHAPIRO SECRETARY-TREASURER

I. A. LAMY, VICE PRESIDENT, ATLANTIC COAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Affiliated with AFLCIO	
Capt. H.W Marshal P	Page Eight Sept. 5,1972
0400 to 0800 - 4 hours weekend 1700 to 2000 - 3 hours weekend	night watch at \$9.49\$37.96 night watch at \$9.49\$28.47
	\$66.43
Gilbert overtime sheet was cred weekend night watch at	lited with 7 hours \$ 9.49
#16 Gilbert overtime sheet was	properly credited for 4/15/72
Tuesday 4/18/72 Hamble No day watch	
Arrival SB.E at 1500 and F	.W.E. at 1842.
Gilbert worked the following 1600 to 2000 - 3 hours night was first finite planted 1900. I wonted 1900 Gilbert overtime sheet was cred watch hours: 1900 to 2000 - 1 hour at \$4.23	atch at \$4.23 \$12.69
#17 Gilber is owed \$8.46 for 4/	/18/72
Wednesday - 4/19/72 Hamble	
Paul turn on day watch Gilbert worked the following ho 0400 to 0800 - 4 hours night wa 0800 to 1300- 4 hours 0.T. imp watch \$9.49	atch at \$4.23\$16.92

Gilbert worked the following hours:

0400 to 0800 - 4 hours night watch at \$4.23 --\$16.92

0800 to 1300 - 4 hours 0.T. improper turn on day

watch \$9.49

1300 to 2000 - 7 hours 0.T. excess, 8 hours at \$9.49 --\$66.43

2000 To 1400 - 4 hrs might watch (\$7.00 cock I owed 1/19/72) 16.92

Gilbert should have been paid - Hars@H23 --\$60.43

Gilbert overtime sheet was credited with the following hours:

0400 to 0800)5 hours at \$4.23 --\$21.15 --\$21.15

1700 to 2000)

1300 to 1700-4 hours at \$9.49

1700 to 2000-3 hours at \$5.26 --\$15.78

(9.49-4.23)

B63.34

\$74.89

#18 Gilbert is owed \$46.42 for 4/19/72

#### Plaintiff's Exhibit 10

 A. LAMY, Branch Agent 752 Broadway
 New York, N. Y. 10003 (212) GR 3 0001

#### DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

hoted with AFL-CIO

J. M. CALHOON
PRESIDENT

C. A. BLACK
EXECUTIVE VICE PRESIDENT

LEON SHAPIRO SECRETARY-TREASURER

I. A. LAMY, VICE PRESIDENT, ATLANTIC SUAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Capt. H. W. Marshal

Page Nine

Sept. 5,1972

Thursday- 4/20/72 Hamble

Norm works day watch /Gilbert turn on day watch 0800 to 1700 Gilbert worked the following hurs 0400 to 0800 - 4 hours night watch at \$4.23 --\$16.92 1700 to 2000 - 3 hours night watch at \$4.23 --\$12.69

\$29.61

Gilbert overtime sheet was credited with
the following hours:
0400 - 0800 ) 7 hours at \$4.23
1700 - 2000 ) 7 hours at \$4.23
1700 - 2000 ) full Hermony logged This o.T. - 5/50 - 3 paid Hermony 20
#19 Gilbert was properly paid for 4/20/72
To s Tena 18/5 welco from 120-2000. Therefore 3 hour 3 hys. @ 4.23 commits = 12.69
TOTAL WATCH HOURS CLAIM IS

-\$497.34

#### Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

#### DISTRICT No. 1 — PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON PRESIDENT

C. A. BLACK EXECUTIVE VICE PRESIDENT SECRETARY-TREASURER

I. A. LAMY, VICE PRESIDENT, ATLANTIC COAST

C. E. DEFRIES, VICE PRESIDENT, BULF COAST

Captain H. W. Marshal

PAGE 10

Sept. 5, 1972

Attached are copies of relief Second Asst. Engr. J. T. Gilbert letters dated Aug. 31, 1972 & Sept. 2, 1972 explaining and substantiating his confine ment to vessel claims onboard the S/S. American Eagle:

1/18/72 - Yokosuka - At anchorage - O448 Arrival S.B.E. First line to dock? 0606 F.W.E.

1/18/72 0800 to 1400 - Confinement 6 hours at \$4.23 --\$25.38 (No launch service during these hours)

1/19/72 2315-to 0315 - Confinement 4 hours at \$4.23 --\$16.92 (No launch service during these hours)

1/20/72 2315 to 0315-Confinement - 4 hours at\$4.23 --\$16.92 (No launch service during these hours)

2/26/72 -Sasebo - At dock

0024 - Arrival First line to dock?

0430 - F.W.E.

0800 - . Pumping cargo ashore 1030 - Shore Passes issued

1045 - No Company water taxi . Paid \$6.00 (2000 Yen) to private taxi.

2/26/72 - Confinement - 3 hours at \$4.23-0800- 1100 --\$12.69

3/15/72- Bahrain - At anchorage-0506 - Arrival S.B.E. First line to dock?

0936 - F.W.E. 1100 to 1330 - Confinement - 3 hours at 4.23 (No launch service available during these hours)
Note: Port time commences 30 minutes

after first line, claim should be from at least 1006 to 1330.

--\$12.69

Disputed Overtime Claim

Mr. J. T. Gilbert overtime sheet of 1/20/72. has 4 hours overtime from 1600 to 2000 disputed. Attached is a letter of explanation substantiating his claim for 4 hours of 0.T. at \$9.49

A 200
Plaintiff's Exhibit 10

I. A. LAMY, Branch Agent 752 Broadway New York, N. Y. 10003 (212) GR 3-0001

# DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON

C. A. ELACK EXECUTIVE VICE PRESIDENT LEON SHAPIRO SECRETARY-TREASURER

I. A. LAMY, VICE PERSIDENT, ATLANTIC COAST

C. E. DEFRIES, VICE PRESIDENT, GULF COAST

Afficiated with Afficial

Captain H. W. Marshal

Page 11

Sept. 5,1972

#### Improper relief

The Captain of the S/S American Eagle claimed that the Permanent Second Asst. Engr. Butler was returning from his vacation and forced Relief Second Asst. Engr. J. T. Gilbert off of the vessel under protest. Mr. J. T. Gilbert signed off articles under protest on May 20, 1972.

Therefore, Mr. J. T. Gilbert as Mr. Butler's Vacation Relief is entitled to wages, room & board from May 20, 1972 to the date Mr. Butler boarded the 3.5 American Eagle on his return from vacation.

If there are any questions please contact the New York Branch Office.

Please mail the check and/or pay voucherss care of Mr. Daniel Colon, Patrolman, New York Branch Office, Dist. No. 1, P.C.D., M.E.B.A. 752 Broadway, New York, N.Y. 10004.

Yours truly,

DANIEL COLON, PATROLMAN

NEW YORK BRANCH

CC: I.A.Lamy

G.Pierangelino J.T.Gilbert

J. Glanstein

DC:g

#### PLAINTIFF'S EXHIBIT 11

LETTER DATED AUGUST 2, 1973



EMBASSY OF THE UNITED STATES OF AMERICA Manama, Bahrain

August 2, 1973

Mr. John T. Gilbert 123 E. 15th Street New York, N.Y. 10003

Dear Mr. Gilbert: This will acknowledge receipt of your letters of July 10 and May 22,1973. I regret the delay in answering your first letter, but I was on leave when it was received.

Regarding the questions posed in your letter of 22 May:

(a) American registered vessels usually are required to drop of their papers at the Consular Section of the Embassy. In many cases, however, the vessels only in in Bahrain for a few hours or at the most overnight. In cases such as these, the articles are usually inspected by the Consular Officer and returned immediately to the ship's master after any signings on and off have been completed.

(b) Seamen on American flag vessels are usually required to be signed off and on the ship's articles in the presence of the Consular Officer. The Consular Section of the Embassy does accept "arine Notes of Protest.

I hope the information above is what you

require.

Very truly yours,

Richard W. Rauh Consular Officer

# DEFENDANT'S EXHIBIT C

# VOUCHER WORK SHEET

3. S.	Voy. No. Port of Date
NAME J.T. GILBERT	Rating 2 ENG W4 status M-Z Eoc. Sec. No. 555-28-3160
2 263469	
WAGES From 12-29-71 From From	to 5-20-72 4 mos. 23 days @ \$/096.94 per mo. \$  to mos. days @ \$ per mo. \$  To mos. days @ \$ per mo. \$  \$5-22.875
ADEA DONNE	
AREA BONUS From	to days @ \$ per day \$
EXPLOSIVE AND OTHER From	EONUSES to mos. days @ 7. of \$ per mo. \$
	9.47 per hour 5058.17  4.23 per hour 274.95
	.26 - 63./2 5396.24
:	TOTAL \$ 10,624,9°
	FOR F.I.C.A. TAX PURPOSES ONLY
	ADD  Board and Lodging Ashore  Subsistence and Lodging Ashore  days @ \$ per Day. 232.
	TOTAL SUBJECT TO F.I.C.A. TAX\$ 10 856 9.7
ADD Subsistence	Ashore - From to days @ \$ per day
Lodging Asho	re - From to days @ \$ per day
. Transportation	on, Etc. \$ 10.00
	TOTAL AMOUNT DUE \$ 10,624,98
Slop Chest 7 Allotments Fines Withholding Tax	145. 10.624.99
	TOTAL DEDUCTIONS \$ 5634.80

# A 203 DEFENDANT'S EXHIBIT D

LETTER DATED APRIL 16, 1973

Mr. John T. Gilbert 123 E 15th St New York City, N.Y. 10003

Monday, April 16, 1973

Consulate Section Dhahran, Saudi Arabia

1/30/73-AF

Dear Sir:

It is most important that I receive on "OFFICIAL" answer to the following questions:

- Do all American flag vessels of American registry, which load cargo at port of Ras Tanura, Arabia come under the jurisdiction of your office?
- 2. Are the ship's papers of said American flag and American registry vessels, namely, "certificate of registry", "charter", "shipping articles" and "crew list" of all said American vessels loading cargo at the port of Ras Tanura, required to deposit these ship's papers at your office, until the master produces the "clearance" of his vessel from the proper port authorities and complies with the laws of the United States regarding the seamen on board?
- 3. Does your office receive all "protests" from any master, seaman, or passenger aboard all American flag and American registered vessels loading cargo at the port of Ras Tanura?
- 4. If it is not possible for a master, seaman, or passenger of any American flag and American registered vessel loading cargo at the port of Ras Tanura to go to your office with a "protest", then can you personally come to the vessel and board same to receive and investigate a "protest" from an individual aboard
- 5. Are all seamen required by law to be signed onto the ship's articles of all American flag and American registered vessels in your presence in the port of Ras Tanura, especially if the seaman or seamen demand your sanctions?
- Are all seamen discharged at the port of Ras Tanura from all American flag and American registered vessels entitled to be discharged with your sanctions, especially if they have a "justifiable complaint", and demand to be discharged with your sanctions before they sign off ship's articles?

A controversy now exists concerning the correct answer to the preceding five questions, and the only place in the world I can receive the answer which will settle same is through your Honorable Office. It will therefore be greatly appreciated if you can give me the answers to these five questions, and hoping that this request of mine will not inconvenience you too much.

Thanking you very much for as prompt a reply as possible, I am - .

Very truly yours,

John T. Gilbert

DEFENDANT'S EXHIBIT E

LETTER DATED MAY 2, 1973



CONSULATE GENERAL OF THE UNITED STATES OF AMERICA

APO New York, N.Y. 09616

May 2, 1973

Mr. John T. Gilbert 123 C. 15th St. May York, M.Y. 10003 North 8 Bill

Tear I'r. Gilbert:

There received your letter inquiring about the Consulate General's procedures regarding the servicing of American flag vessels that enter the part of Mas Tanura, Saudi Arabia. As you know, Dhahran is not a poit. Ships are not required to drop off their papers at the Consulate General when calling at Mas Tanura. We normally ask a Master or Greenan to visit the Consulate General when there is a problem, because we are over an hour's drive from Mas Tanura, and entrance to the port area requires advance security clearances with the Ararco/Saudi authorities, etc. We honor requests to board vessels only in genuine emergencies, if we have personnel available. Seemen can be signed on and off without our presence, if we are unavailable, as long as they make this action official at the next port of call which has a Consular Officer available. We will receive "protasts" brought to us by any seaman.

I hope that this information answers your questions.

Sincerely,

Consular Officer

#### DEFENDANT'S EXHIBIT F

LETTER DATED JULY 11, 1973

July 11th, 1973

CHATIFIED MAIL Return Receipt Requested

Hr. John Theodore Gilbert 123 H. 15th Street New York, New York 10003

Re: John Theodore Gilbert vs.
American Eagle Tanker Corp.
U.J.D.C. - G.D.H.Y.
Index Ho: 73 Civ. 2227
Cur File No: 36885-FOB/RJR

Dear Mr. Gilbert:

This will confirm your telephone call to the undersigned wherein you requested a further adjournment of our deposition of yourself as party plaintiff. We confirm our granking you an adjournment until Wednesday, July 25th, 1973 10:00 A.M. at our offices.

As we have advised you, we will not consent to any further adjournments. We have now extended you this courtesy on two occasions in spite of the fact that you failed to appear or even communicate with us until the time for the first examination had already passed. In view of the amount involved as well as our right as defendants to secure your testimony, we insist upon proceeding on July 25th. Should you be unable to secure all the documentation requested in our notice we wish to proceed anyway and will reserve our right to examine you further at such time as you have the remaining papers available.

We make further reference to your statements to the undersigned concerning financial difficulties and confirm naving advised you that our client is still holding approximately \$5,000.00 in wages due you which they are prepared to pay you without prejudice to any rights you may have under

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## Defendant's Exhibit F

this pending law suit. We further understand that you were previously notified of this amount due by both our clients as well as your union.

Very truly yours,
HILL, RIVKINS, McGCNAT & CAREY

BY:

Robert J. Ryniker

RJR/vs Enclos:

cc: Monorable Charles M. Metzner
United States District Judge
United States District Court
United States Courthouse
Foley Square
New York, New York

s. s. A

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#### DEFENDANT'S EXHIBIT I

TELEGRAM DATED MAY 18, 1973



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Received on board

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Date .... 18 17

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GEO BUTTLER REJOINING RASTANURA STOP FIRST POTATES DAYWATCHES INCLUDING WESKERD HOLIDAYS STOP RECOMMEND FOLLOWING LAMY LETTER REFERENCE EVOLUBER FORTMATCHES -

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ITT World Communications Inc. subsidiary of International Telephone and Telegraph Corporation

211 DEFENDANT'S EXHIBIT M LETTER DATED OCTOBER 3, 1972 AMERICAN LAGLE TANKER CORP. STEAMSHIP OWNERS AND OPERATORS 80 BROAD STREET NEW YORK, N. Y. 10004 TELEPHONE 212-344-7438 October 3, 1972 3/28/73 Mr. Daniel Colon, Patrolman District No. 1 - PCD, MEBA 752 Broadway New York, New York 10003 Chech issued for 76.14 Dear Mr. Colon: Subject: % AMERICAN EAGLE Disputed overtime claim of J. T. Gilbert, Rel. 2nd Asst. Engineer We refer to your letter of September 5, 1972, and our letter of September 19, 1972, regarding the subject claim. Before replying to specific points, we believe the following items are pertinent: 1) Sea watches were maintained continuously for the entire watchstanding portion of the crew, not for the 2nd Assistant Engineer alone. 2) Since March, 1959, the same method has been used for sea watches and for watch rotation by the assistant engineers i.e. the 1st Asst. rotating on weekdays and the other three assistants standing the night watches and weekend day watches. The method of watch rotation has never been questioned by any permanently assigned or relief assistant engineer and it has been confirmed by MEBA patrolmen at various ports. When the Chief Engineer returned to the United States in February, 1972, he again confirmed the method of watch rotation with the Port Officials at Baltimore. 3) We agree, that in port on various days, the 2nd Asst. Engineer stood three hours each day in addition to those stood by the two 3rd Asst. Engineers and also that the night watch premium pay was split among the three Engineers. On the day the 2nd Asst. stood the day watch, he received additional compensation for the hours in excess of eight i.e. 4 hrs @ \$9.49 plus 3 hours differential between OT and PT or \$5.26, totalling \$53.74. #1 General The engine log book shows that on 1/18/72 Gilbert worked seven hours from 0400-0800 and 1700-2000 The engine log book shows that on 1/19/72, Oliferowitch not Gilbert stood the watch from 1700-2000.

# Defendant's Exhibit M

CAN EAGLE TANKER CORP.

Mr. Daniel Colon, Patrolman -2-MEBA

October 3, 1972

The engine log book also shows that on 4/20/72 Oliferowitch not Gilbert stood the watch from 1700-2000.

The day watch rotation on board the vessel was as stated in that the 2nd Asst. followed the 1st Asst., however, the engine log shows the previous four watches prior to Mr. Gilbert joining the vessel were:

Tues, December	14, 1971	0800-1700 Paul 1 AE
Wed,	15	0800-1700 Butler 2 AE
Thurs,	16	0800-1200 Oliferowitch 3 AE
		1200-1700 Norman 3 AE
Friday	17	0800-1700 Oliferowitch 3 AE.

This indicates Paul, 1st Asst, was scheduled for December 29, 1971, and stood the watch.

#2 - 12/30/71 Ras Tanura

We do not agree with the method of calculation of the amount due Gilbert as watches before 0800 and after 1700 are to be paid at PT of \$4.23 and are to be split among the three watchstanding engineers and no overtime is to be paid for the 0800-1700 watch. We believe that the Chief Engineer's method more accurately reflects the night watches and payment in excess of eight hours.

The difference of \$8.46 is the same as claimed in that Mr. Gilbert did work an additional three hours for which he was paid for one. This amount of \$8.46 is shown in Item 1.

#3 - 1/18/72 Yokosuka

The deck log shows that from 0606 the vessel was awaiting quarantine and pilot as covered in Sect 9c (Officials not on duty) Pratique was granted 0750 Pilot boarded 0800.

#3, #4 and #5 include the night watches at Yokosuka and as the 'hours are to be divided among the three watchstanding engineers, the available hours were:

1/18/72 1700-2400 **7** 1/19/72 0001-0800 **8** 1/19/72 1700-2400 **7** 

1/20/72 0001-0800 8 Total 30 or 10 hrs each.
Mr. Gilbert was paid 11 hours or one hour in excess at \$4.23. Mr. Gilbert

stood watch eleven hours in this period as follows:

1/18/72 1700-2000 1/19/72 0400-0800 1/20/72 0400-0800.

The engine log shows Mr. Oliferowitch stood the watch on 1/19/72 from 1700-2000.

Mr. Daniel Colon, Patrolman -3-MEBA

October 3, 1972

#6 - 2/6/72 Ras Tanura

Each watch standing engineer stood his assigned watch and received overtime hour for hour. In addition the 1st Asst. Engineer worked from 0800-1200 and 1300 to 1700 for standing by engine room, arriving and general E.R. maintenance.

#7 - 2/7/72 Ras Tanura

Gilbert was credited with the following hours:

1300-1700 4 hours at \$9.49 \$37.96

1700-2000 3 hours at 5.26 15.78

0000-0300) 5 hours at 4.23 21.15 (1/3 of 15 hrs)

2200-2400)

2000-2200 2 hours repairs at 9.49 18.98

Additional 2 hrs claimed at 4.23 - \$8.46 in Item #1.

#8 - 2/8/72 Ras Tanura

The \$8.46 claimed is duplicated in Item #1.

#10 - 2/27/72 Sasebo

Sea watches maintained continuously and weekend rotation maintained.

#11 - 2/28/72 Sasebo

We agree that Gilbert worked four hours and was paid for three on three way split with the watch standing engineers.

#12 - 3/15/72 - Bahrain - Anchored 0640 - Port time 0710

#13 - 3/16/72 - Bahrain

#14 - 3/17/72 - Bahrain

As the night watch hours are to be divided among the three watchstanding engineers, the available hours were:

3/15/72 0710-0800 1 1700-2400 7

3/16/72 0001-0800 8 1700-2400 7

3/17/72 0001-0800 8

1700-2400 7 Total 38 or 13 ± 13 ± 12.

Gilbert stood 18 hours port watch and was credited for 16 hours - 8 hours each on 3/16 and 3/17. In addition, he is claiming six hours in Item 1 for the three days. This would mean an excess payment of four hours.

#15 - 4/14/72 - Rota

The vessel had FWE at 0548 Port time commenced 0618 therefore Gilbert stood port watches from

0618-0800 2

1700-2000 3 - Total 5 hours of which

two are claimed in Item 1. Payable 3 hours at \$4.23 - \$12.69.

AN LAGLE IANKER CORP.

Mr. Daniel Colon, Patrolman -4-MEBA

October 3, 1972

#17 - 4/18/72 - Hamble

The vessel had FWE at 1842 plus 30 minutes for port time. Port time commenced 1912. Gilbert was paid from 1900-2000 - 1 hours. Pratique was granted at 1950.

#18 - 4/19/72 - Hamble

Gilbert as 2nd followed Paul as 1st on day watch. Paul stood last watch on 4/15/72. Additional two hours worked claimed in Item #1.

#19 - 4/20/72 - Hamble

The engine log book shows Oliferowitch stood the 1700-2000 watch not Gilbert, therefore Gilbert was overpaid one hour and 4/20/72 entry on Item #1 should be eliminated.

We refer to the confinement claims:

1/18/72 - Yokosuka

The deck log shows the following entries:

0448 Arrival SBE

0558 Let go port anchor

0750 Pratique granted

0800 Pilot aboard

0855 First line to buoy

0906 FWE (0936 Port time commences)

0930 Customs aboard

1000 Immigration officials aboard

1040 Shore passes distributed

1100 Immigration officials away.

The undersigned went to the vessel with the agent and watchman and boarded after pratique. We went by commercial launch which was available to the crew upon the shore passes being issued by Immigration. Launch service to the fullest extent permitted by the Customs and harbor officials was provided to the crew. Please note that the two 3rd assistant engineers, three deck officers, six AB's, 3 OS, 3 FWT and 3 Oilers were also on watch as well as Mr. Gilbert. We contend that maximum launch service under Section 17 was provided and that Mr. Gilbert stated in his letter of August 31 that the launch service "absolutely refused" to take him to the vessel after 11:15 PM.

1/19/72 2315-0315 - Section 17, as above.

1/20/72 2315-0315 - Section 17, as above.

2/26/72 - Sasebo - at dock

At Sasebo, there is U.S. Navy quarantine which permits the vessel to go to a dock. There are Japanese Customs and Immigration who board after 0800. There is no notation in the deck log concerning the time shore passes were issued but shore watchmen boarded at 0800 and they

# Defendant's Exhibit M

CAN EAGLE TANKER CORP.

Mr. Daniel Colon, Patrolman -5-MEBA October 3, 1972

board by launch. While the vessel berths at a Navy dock, Japanese Customs require use of approved launch to land all personnel at Customs Boat Landing. Launch service to the fullest extent permitted is provided and we question the possibility of employing a private "taxi" to leave the vessel.

3/15/72 - Bahrain

The vessel docked at 0945. At 1055 the Customs and Immigration were away. There is no launch service prior to docking and upon docking the fullest launch service possible was provided.

We refer to the disputed overtime claim of 1/20/72. Gilbert stood the 0400-0800 watch for which he received \$4.23 per hour, worked seven hours, off watch, during the day for which he received 7 hours overtime at \$9.23 and then stood the 1600-2000 watch at sea to complete his eight hours. He worked seven hours in excess of eight hours and received seven hours overtime pay. In Mr. Gilbert's letter he stated that he was "requested" to work overtime.

We refer to the improper relief claim. Mr. Butler left the United States May 18, 1972 with a scheduled arrival at Ras Tanura on May 19, 1972. The plane was delayed enroute and Mr. Butler arrived and rejoined the vessel on May 20, 1972.

The subject vessel has always carried petroleum products (never grain), is usually in port from 24 to 48 hours and always maintains sea watches. The 1st Asst. Engineer rotated on the day watch during the week days without the payment of overtime but never on weekends when overtime was payable.

We note that the Agreement does not state watches are to be broken in port or that there is an ironclad system of rotation among the engineers but the "one of the regular Assistant Engineers shall perform the work." We note that on this vessel, there was a change in watches among the engineers including substitutions for Mr. Gilbert on two occasions.

We note that in the Agreement effective June 16, 1972, watches still do not have to be broken but that night watches shall be arranged in approximately 8-hour periods and that as a vessel arrives in <u>each successive port</u>, the engineers shall determine the order in which they will take their respective turns. This certainly clarifies and equalizes watches.

We reiterate that the watch rotation on the vessel prevailed since 1959 and the system was confirmed by MEBA officials over the years and as late as February, 1972. Upon receipt of Mr. Lamy's letter of

# Defendant's Exhibit M

MERICAN EAGLE TANKER CORP.

Mr. Daniel Colon, Patrolman -6-MEBA October 3, 1972

March 13, 1972, the 1st Asst. Engineer stood a weekend watch at the next port of arrival.

We do not believe that the conditions of the Agreement have been violated in regard to Mr. Gilbert. We agree that he stood three hours port watch in addition to those stood by the third assistants and was compensated for only one but in accordance with Section 10. In addition he was compensated at the rate of \$9.49 per hour for seven hours on those days he stood the day watch.

Although the night watches premium pay was split among the three engineers and Mr. Norman and Mr. Oliferowitch received the additional two hours, in fairness, we offer to compensate Mr. Gilbert for the two hours daily on those days he worked:

Thursday,	12/30/71	1700-2000	2 hrs at 4.23	\$ 8.46
Monday,	2/7/72			8.46
Tuesday,	2/8/72			8.46
Wednesday,	3/15/72*			8.46
Thursday,	3/16/72*			8.46
Friday,	3/17/72*			8.46
Friday,	4/14/72			8.46
Tuesday,	4/18/72			8.46
Wednesday,	4/19/72			8.46
				\$76.14

\*On 3/15-16-17/72 Mr.Gi lbert is entitled to 2 hours and is claiming 6,per Items #12, 13, 14

- 4 hours at 4.23 - 16.92

On 2/28/72 Item #1 - he is due additional 1 hr. \(\frac{1}{4}\) 4.23
On 4/14/72 Item #15,he is due add'1 3 hours \(\frac{1}{4}\) 12.69

On 4/20/72 Item #19- overpaid one hour - 4.23.

In our opinion, Mr. Gilbert will be made whole with a payment of \$76.14 and we await your reply.

Very truly yours,

AMERICAN EAGLE TANKER CORP.

H. W. Marshall Vice President

HWM:Mac

#### DEFENDANT'S EXHIBIT N

#### LETTER DATED NOVEMBER 27, 1972

I. A. LAMY, Branch Agent ; 752 Broadway New York, N. Y. 10003 (212) GR 3-0001



DISTRICT No. 1 - PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

J. M. CALHOON, PRESIDENT

C. A. BLACK, EXECUTIVE VICE PRESIDENT

LEON SHAPIRO, TREASURER B. R. FRANKS, SECRETARY

I. A. LAMY, VICE PRESIDENT, ATLANTIC COAST C. E. DEFRIES, VICE PRESIDENT, BULF COAST

November 27, 1972

Captain H. W. Marshall American Eagle TAnker Corp. 80 Broad Street New York, New York 10004

Reference: Rebuttal to Your Letter Dated 10/3/72 in Reference to Relief 2nd Assistant Engineer J. T. Gilbert S/S American Eagle

Dear Captain Marshall:

Attached is a letter of rebuttal and supplement that I asked Mr. John T. Gilbert to prepare in reply to your letter of October 3, 1972.

Please review the entire grievance so that we may meet as soon as possible to discuss and conclude the outstanding grievance of John T. Gilbert.

> PATROLMAN NEW YORK BRANCH

CC: I. A. Lamy

G. M. Pierangelino

Certified Mail #315588 Return Receipt Requested

DC/js Attachments

....

218 Defendant's Exhibit N J. T. Gilbert W.BA District No. 1 "or York City, Y.Y. Contain T.W. Morshall American Wagle Tanker Corp. 40 Broad St. Mer Ydr't, T.Y. 1000; Movember 27, 1972 REGARDS: Rebuttal of your letter of Oct. Rebuttal of your letter of Oct. 3, 1972- Concerning DISTUT D OVERTIES, ETC. Dear Sir: I refer to your letter of Oct. 3, 1972 and MEBA Patrolman, Mr. Colon's letter of Sept. 5, 1972- Plus SEVERAL letters I wrote, dating back to Feb. 7/2, 1972. Rebutting your allegations in Items 1 to 2 respectively, as follows: 1) (a) Sen watches WERE NOT maintained for ALL the assistant engineers, but were only maintained for the 2nd A/Engr., J.T. Gilbert. It IS IRESLEVANT as to whether or not any other crew members stood sea-watches, or not! The main issue have is 20% the assistant engrs. stood port watches on the S/S American Eagle! (h) My letters to the MEBA dated 2/7,8/72, 1/20/72 and June 1, 1972 respectively- PROVE beyond a reasonable doubt, that sea-watches were only stood has, and that the other two ass't engrs. DID NOT stand sea-watches in port! 2) is watches TERE NOT broken in port for all stays longer than eight (8) hours, and as to your allegations that "sea-watches were maintained by all assit eners. in rout". I hereby now show you exactly just how sea-watches GHOULD HAVE THE TATE OF THE PROOF IN order to comply with your allegation that "sea-watches uses maintained at all times in port", as follows: One 3rd A/Dnar. should have stood 0000-0400 and 1200-1500 hrs., respectively. Other 3rd A/Dnar. should have stood 0300-1200 and 2000-2400 hrs., respectively. I stood 0,00-0300 and 1700-2000 hrs., but should have stood 0,00-0300 & 1600-200 Furthermore- said watches should have been ROTATED as I demanded, so that each engr. stands approx. the SAME number of hours each day. Also- the 1st A/Engr. MUS BY MICHUDED on the day-match on ALL Sat., Sun. and Holidays (See Mr. Lamy's letter of March 13, 1972), and this WAS NOT BONE on this vessel! Also- ALL watches MUST BE EQUALLY DIVIDED- NOT JUST ALL MIGHT WATCH OVERTIME! Also-ALL vatches FUST BE EQUALLY DIVIDED FOR JUST ALL MIGHT WATCH OVERTHEST any other method of watch-standing aboard any vessel MUST obtain the sanctions of the 2nd A/Degr. FIRST and if he MILPULLY agrees to stand watches (like was demanded of me on the ALTH. MAGLE when I was aboard), then said 2nd A/Megr. HAS NO ONE TO BLANT, BUT MINDELF! I was FORCED to stand port watches the way I did, both AGAINST BY WALL and MITHOUT MY CONSENT, and this is one of the reasons I SIGNAD-OF the vassel "MUST PROTEST", but at the same time I HAD many more reasons! 1 General First paragraph- True, I worked soven (7) hours on 1/18/72. Second " - True, Oliferowitch stood the 1700-2000 watch on 1/19/72, so that I could sign-on the Articles at American consul, Yokohama- SHIP'S BUSINESS However, it MENTIONS NOTHING about my standing back four (4) hours between 2000-2400, on Ad. 1/10/72 (Four hours I stood to psy-back three hours I owed from taking care of SETF'S 2USINESS on 1/19/72! The Company owes me ANOTHER four (4) hours of overtime here, which I haven't been paid yet and which Hr. Colon forgot to put down in his letter of Sept. 5, 1972, which I incl. in Item # 18 herein. Tirst paragraph, second page of your letter- 3rd A/Dagr., P. Norman was SUPPOSED to have stood by watch 1700-2000 on 4/20/72, as I PAID III. 320 out of my packet to stood whis watch, so I could take core of UNION SUCCESS in Tamble, Bag. Therefore- the Company oves me ANOTHUR three (3) hours of overtime here. Any ques there about this SUE Norman, and if he EMPHOUS TO ANOTE I paid him I will reserve the right to FRINKI CHARCES with MEBA against him for LYING about this matter, PAU several other CHARGES at the same time!!! Second paragraph, second page of your letter- It is irrelevant as to how day unterpose were rotated NEFOLE I came about the vessel. The fact remains, that I M (MINIO) to stand a day-witch my first work day abourd 12/30/71, as I was told it in the 2nd A/Engrs. turn for name. Mornan followed no the newt day in port, which

. . T. Gilbort

( FAGE NO. 3

Hovember 27, 1972

Mr. Marshall

#8 - 2/4/72 les Tanura, Tubefay (third page of your letter) : Third the 10.46, as per Mr. Colon's letter of Sept. 5, 1972- Item #8.

#9 - 2/26/72 Sasebo, Saturday
I received 6 hrs. 0.T.- 0600-0300 and 1600-2000 - No Beef Here .

To day-ratches ROTATED- As per MEBA Agreement. J. Faul, 1st A/Dagr. MAS SUPPOSED to have had the day-watch, but DID NOT stand semell! See Mr. Lamy's letter of March 13, 1972.

Cliferoritch stood ALL of Norman's watches (It will be noticed at this point that BOTH 3rd A/Engrs. stand the REQUIRED SEA-MATCHES on Sat, Jun. and Holidays only, namely Norman stands from 0000-000 and 1200-1600, and Oliferoritch also stands from 0000-1200 and 2000-2400.) this day, plus his own sea watches.

The didn't chief engrs. Lr. Burns and Mr. Coleman CADER both 3rd a/Engrs. to stand DEA-MTCHES IN FORT in EVERY port, in the manner I just described in the previous paragraph, namely four (4) hrs. in the manner I just described in the evening WERY DAY IN FORT- Not just on all Sat. Sun. and Molidays as they had been doing??? On this day, namely Saturday, Feb. 26, 1972- Both Horman and Coliforniated MCHAILY stool the REPUILED EAL-MATCH, as par MERA AGREGATION. They each stood two (2) hour (4) hour watches in port this day- Nich constitutes that HERA calls FLA-MATCHES IN FORT. To other DEVIATION of this manner of standing FLA-MATCHES IN, nor can be called "STANDERS A SEA-MATCHE IN FORT". Therefore, at ALL TIMES THIS VESSEL MAS IN FORT WHILE I WAS ADOARD SHA-MATCHES IN THE STOOL BY TITHER ONE OF SAID THIRD ACSIT ENGRS. BECAUSE THEY BID HOS STAND THIR MATCHES IN FORT THE MATCHES OF THE MATCHES IN FORT THE MATCHES OF THE MATCHES IN FORT THE MATCHES IN FORT THE MATCHES IN FORT THE MATCHES IN FORT THE MATCHES OF THE MATCHES OF THE SAID DAY, FOR EVERY SINGLE MAX-DAY I MAS ABOARD THE WASSILLING TOUR (4) hours for each and every day in port from Mon. to Tri., EXCEPT these they had the "day-match", and even them they DID NOT stand the MEDULED number of hours, as they only worked 12 hours on that day, whereas they SHOULD have worked 17 hours— Considering the fact that they stood a nine (9) hour "day-match"!!!

#10 2/27/72 Casebo, Sunday
I received 6 hrs. 0.T.- 0.00-0000 and 1600-2000 - No beef On 0.T. Here.

Again- Cliferowitch stood ALL of Horman's watches, and in the SAME manner I have just described in Item #9, preceding herein.

It was HY TURN to stand a "day-waten", but Cliferowitch ARAMAUTELY STOOD SAMELII All of this was UUDER THE SAMETIONS OF THE CHIEF SMOR., MR. COLEMANIII I demanded to stand my "day-watch", but chief, Coleman and 3rd, Oliferowitch CVERRULED LEWI I ALWAYS get the SAME OLD ANSWERS FROM THEM, namely that "the Ratrolpan in Gam Francisco, New York, New Orleans or some OTHER port" told them "something different"!!!

Work-ond "watch rotation" AS NOT maintained- Demanding \$75.92 - See Mr. Golon's latter of Sept. 5, 1972.

#11 - 2/28/72 Sasobo, Monday
Demanding 1,.23, as per Mr. Colon's letter.

Taproper Potation of the "day-watch" - Norman had the day-watch, but BID MO stand same. Oliferowatch stood the "day-watch" 0000-1200. Norman showed-up aboard the vessel - After being absent from same for about 49 SOLID HOURSILLI

#12 - 3/15/72 - Bahrain, Wed.

I stood 1700-2000 port watch. Demanding (12.62 for this day- I made a correction on Mr. Golon's latter- My 0400-0000 was not on PORT TIME. Therefore, I subtracted hers, C.T. C 94.23 (029.61 - 01/92) - making a sum of 012.69.

Improper Rotation of the "day-watch" - Oliferowitch had the "day-watch", but lst A/Engr., J. Paul stood same!!!

T. Gilbert

( FAGE NO. 4

November 27, 1972

Er. Harshall

#13 - 2/16/72 - Bahrain, Thursday (thick page of our letter)
Improper Rotation of the "day-watch". Paul's turn for "day-watch", but I
was FORCED to stand same! I worked from 0400-2000 for a total of 15 hrs. in port

Demanding 33.73 for 3/16/72. See Mr. Colon's letter of Sept. 5, 1972.

#11. - 3/17/72 - Bahrsin, Friday (third page of your letter)
Improper Rotation of the "day-watch". My turn for the "day-watch", but
Norman stood same. I worked from 0400-0300 and 1700-2000 this day.

I was over-credited 04.23 this day - Subtract same...

#15 - L/14/72 - Rota, Friday (third page of your letter)
Improper Rotation of the "day-watch". Norman's turn for "day-watch", but Oliferowitch stood same from 0800-1700.

for this Item #15. Port time did not start until 0600, therefore I have port time eventiae for the seven (7) has Mr. Colon for me in his latter of Sept. 5th instead of the seven (7) has Mr. Colon had down for me in his latter of Sept. 5, 1972 for this Item #15- 5 hrs. 0.T. @ 04.23 is 621.15

#16 - 4/15/72 - Rota, Saturday (this SHOULD HAVE BEEN on Ath page of your letter, but you left same out- CC.PLUTCLY)

Improper Sotation of the "day-watch". Oliforowitch's fun for the "day-watch but let, Faul stood same from 0000-1700. It will be noted that this is the FURST day Faul ever worked a "day-watch" on a week-end while I was abound this vessel!!! He did so because I told him to go by Mr. Lamy's letter of March 13, 1972, and he WOULD TOT have done this UNLESS I HAD NOT WRITTEN TO FR. LAMY BUFORMAND!!!

By 0.7. sheet was properely credited for this particular day.

#17 - L/10/72 - Hamble, Tuesday (page #4 of your letter)
To "day-watch" this day. I worked a port watch from 1900-2000- 1 hr. 194.23

#18 - L/19/72 - Earble, Threesday (page #4 of your letter)

Improper Rotation of the "day-watch". Paul's turn for "day-watch", but I was reacced to stand same. I worked from 0400-2400 this day- total of-14-bre-620 hrs.

I made ANOTHER CORRECTION on Mr. Colon's latter of Sept. 5, 1972 herein. To Mr. Colon's firme of 121.31- I ADDED the four (4) hrs. of overtime (3 hrs. Cliferowitch stood for me in Yokosuka on 1/19/72 - PANS 1 1774 hr. I stood on this day of 1/10/72 in Mamble) I stood between 2000-2400, TO PAY 340K THE 3 His. TO TO MARK 1/10/72... If this seems confusing then blame Oliferowitch and Norman and chief, Coloran, as they are the culprits that caused all of this PORT THES 0. The set all mixed up in the first place!! In other words I was FORMED to stand back a L hr. watch this day, to pay back 3 hrs. Cliferowitch stood for me on Jan. 19, 1072, while I MAS ADDORE ON SHIP'S BUSINESSIII Mather or not Oliferowitch was ashore on SHIP'S BUSINESSIII mather or not Oliferowitch was ashore on SHIP'S BUSINESSIII mather or not Oliferowitch was ashore on SHIP'S BUSINESSIII mather of NOT MY BUSINESS- and I care lassiiii care lass!!!!

So 0121.31, as per Mr. Colon's letter of Sept. 5th for this Item, PLUS the hars. of 0.7. 0.0h.23 I stood from 2000-2400 this day of h/19/72 - MINUS the 57h.59, as per Mr. Colon's letter of the 5th, comes to a net of 063.34. I am therefore demanding the sum of 063.34 in overtime for Item #13 herein.

#19 - 1/20/72 Hamble (page #4 of your letter)
Improper Day-Watch- My turn for same, but Norman stood from 0300-1700.

Rebutting your allegations that Oliferowitch stood the 1700-2000 watch this day. Oliferowitch stood this particular watch for Norman, who in turn stood by for me so I COULD TAKE CARE OF UNION BUSINESS. I PAID Horman 920 GAM to stand this three (3) hr. watch for me. So I AM DEMANDING THAT I RECEIVE SAID THREE (3)

T. T. Gilbert ( FAGT TO. 5

"ove shor 27, 1072

(

Fr. Marshall

HOURS NOTE TATOR SYNTHER, REGIRDLESS OF THEFTHE TO LAT ST CITE MO TOOL FAIL FOR CITE ATOR. See also Lie 1 #1 Georgial on the first page of my letter bereit.

Therefore, I am demanding \$12.69, for the three (3) hours Torman stood for me 1700-2000 on 1/20/72 in the port of Tamble, Eng., because I already paid him \$20 to stand this watch for me.

I notice that Mr. Colon has down under Item #19 of his letter of Sept. 5, 1972, that I was properly paid for this day of 1/20/72. Toward, I have hereby Golan Grant TISTACA, in that I have added 112.69 to Item #19 herein, which Mr. Colon FORGOT to put down.

Rebutting your allogations to the contrary - Regards my CONFIRMANT CLAIM. (page 4 1/12/72 - Yokosuka - At anchorage - La Vol-

0506 FTB - 0300 Hoses out (We MEVUR know when first line goes to dock, as this classified information, RESERVED FOR MATES OTLY!)

T MIRED but on the deck from Odl5 until MOD, and STILL NO SHOWS FARRES BUT - go wit to bed to rest, before standing by Mill Mode and at 1700.

I am claiming "COUNTIL THE TO VESSEL" from 0800 to 1400, as per lir. Colon's letter of Sept. 5, 1972 - 5 hrs. 0 04.23 - No 1s men and no passes by 1/00-25.35

I am also charging all hands concerned with "MISHTEL-ON THE FACTS" on this issue.

Cliferowitch was also waiting to get off the ship too, and he was also waiting when I went to bed at 1500. Japanese officials were all over the vessel at 3 At this day.

Margine launch service was not provided for me! Both 3rds, the chief and let A/Drgrs. CHLY REPUBLIED CHE LAUTCH A DAY, as both 3rds had 20 solid hrs. off watch each day, and the let A/Dgr. was off duty 21 solid hrs. each day - except on EVENY Ath PAY IT FORT, when each one of these non took his turn on "day-watch". This is no system!!! In my case CHE LAUTCH did me no good, as I only had eight (2) hrs. off watch. Europeaner- it took two (2) hours point and coming (counting time waiting for the launch at each end for 15 min.) just to jet achore and back. To the 3rds each get around 12 solid hrs. ashore in this port (UNERCHAEL), while the majorities I can get ashore is 6 hrs. - EVEN IF THESE IS A LAUTCH FOR HE!

1/19/72 - Yokosaka - Anchorage -

(No launch service during these hours) - 16.92

1/20/72 - Yokosuka - Anchorage

GOUFFINE 2315 to 0315 - h hrs. 1 (4.23 (No launch) - 016.92

2/25/72 - Sasebo - At dock

CONTREMENT 0300 to 1100 2 hrs. 4 04.23 (No lounch) - 012.69

2/15/72 - Bahrain (fifth page of your letter)

COMPINEE IT 1100 to 1330 - 2 hrs. 0 (4.23 (to launch) - 012.69

WOTE - See also ir. Colon's letter of Sept. 5, 1972 for Official verification of all CONFINEDIT CLAIMS on this page.

# Defendant's Exhibit N

. . . T. nilbert

FACE NO. 6

Tovomber 27, 1972

Mr. Marshall

Tebutting your allegations to the contrary - Women's By MINUTED OVERTER CLAIM. (Fifth rage of your letter)

1/20/72 - Mokosuke - / 10093 OF 6 BR3. COAVING FORT

See my letter, one whole page attached to Fr. Color's letter of Sept. 5, 1977 entitled "Dection 9. Overtime - X-6333 3 HRS. Leaving Fort". This particular item is also in "Section 19. Overtime, Fenalty and Fremium Late - FURLITY MATE", Sec. 3, paragraph (j), page 43, 1969-1972 Tanker Agreement.

110333 8 335. - 1600 to 2000 - 4 hrs. @ 19.49 (Mr. Lamy C.TD this) - 137.96

It makes no difference whether I was "requested" or "required" to work overtime in this case.

Also- see "Section 23. Test Before Match", rage 53 of 1969-1972 Tanker Agreement- "No engineer shall be ENGLIST or PARTITION to take charge of a match upon leaving or immediately after leaving port unless such officer shall have had at least six (6) hours off duty within twelve (12) hours immediately preceding the time of sailing." Youth notice that it says REQUITION or PARTITION here. You will also notice that I worked from 0000-0300 on port watch, 0900-1200 overtime, and 1000-1500. This means that I worked a total of 10 hrs. but of the 12 hrs. immediately preceding the sime I went on watch at 1500 that day. I was impulated to and did shand my entire watch from 1600-2000 that day AUSO.

3/17/72 - Bahrain - DELAYED SAILING - Moek-End

or. Color does not have this overtime down in his letter to you of Sept. 5th, so I am including this overtime herein. You didn't mention this overtime either.

2000-0100 - 5 hrs. @ 04.23 of "Delayed Sailing"

- 021.15

See my copy of the MESA Tanker Agreement concerning this matter, same of which is attached to Mr. Colon's letter of Sept. 5, 1972. I am quoting the first paragraph of my papers (A pares) entitled "IX. Section II (Jours of Labor at Sea)' an follows - "Refuting Chief Engineer, Mr. V.C. Colonasis allocations that THEST IN THE CHARGE OF CHARGE IN THE FLAT SOUTH OF CHARGE THAT THE FLAT (5, 1907) OF COURS OF OVERTIFY I, J. T. GILD RETURNED IN ON MY COLOTTON OF BATTAIN IS GOOD."

The entire Agreement I have typed-up on this matter is sufficient to prove beyond a reasonable doubt, that Mr. V.C. Coleans IS FONG for alleging that "there is no clause in the MRA Agreement Book on this matter of look-End Sailing".

under COTION U. STA MATCHES, pages 36 to 32 respectively. He. Coleman AUST have had soot in his glasses if he couldn't rend Class four (%) pages on DELAYED SAILE

THEROUGH RELIEF - On May 20, 1972

hory to told you this is WILFULLY and ARBITRARILY GUILTY OF FURIOSHLY AND ALSO MALTOTOUSLY "MISCENTERS THE FACTO"!

Pirst- I never left the immediate dock area (CARTT-TRIS AGAINST THE LAW) clont-side the ship until around midnight of 5/20/72, and Butler HAD NOT showed up by them.

Second- The Ament's Office ashore at around 0030, and then the airport itselect around 0130 on 5/20/72, told me that Butler BAD NOT arrived yet, but was expected in on the next plane due at Bhairan Airport around norm of 5/21/721 How do I have things//? I TALKED to said Agent in his office ashore and with said airport personnel about Butler!!!

( T. Silbert ( FAST 10. 7 ( November 27, 1972

ir. Paraball

# IMPROPER ROTATION OF MATCHES - (fifth page of your letter)

The lot A/Thyr., J. Paul MEVER rotated watches on week-ends, as MENURED by the Agreement, MICEPT WHEN I DEMANDED IN TO DO SO OF SAT. A/15/72, in Bota, Spair

Considerent To Vessel", pages 41-43 of the 1969-1072 Tanker Arregards "Then a Vessel arrives at a safe harbor for a stay of more than eight (4) hours, the Company SHALL furnish launch service, one daily round trip for SACH ATCH when weather permits and when regular service is available. Such launch to be available TO ALL VESSEL PERSONNEL." This section specifically implies the fact "that watches SHALL BE EROKEN, AND THAT REGULAR & HOUR PORT MATCHES SHALL PREVAIL, WHEN VESSELS STAY IN FORT IS HORE THAN EIGHT (8) HOURS". Interpreting the HEBA Agreement to the afore mentioned matter under consideration, we find said Agreement specifically states that "ONE DAILY ROUND TRIP FOR EACH WATCH" - And therefore watches in port MIST be ALL stood on an HIGHT (6) HOURS basis. By standing NIGHT (2) HOUR watches in port, OMLY THREE (3) DAILY ROUND TRIPS FOR SAID LAUNCH IS HECHSSARY!!! And- by the SAKE token, OMLY ONE DAILY ROUND TRIPS FOR EACH WATCH IS MIDESSARY!!! And- by the SAKE token, OMLY ONE DAILY ROUND TRIPS FOR EACH WATCH IS MIDESSARY!!! However, on the S/S American Eagle (When I was aboard it) the OMLY engineer aboard the vessel who stood two (2) watches EVERY DAY IN FORT was Mr. J. T. Gilbert, and beings the MEBA Agreement specifically states that "ONLY ONE DAILY ROUND TRIP FOR EACH WATCH IS ACCUMENTED FOR LACH MATCH IS RECEIVED THE FOR THE ACT MATCH SANDLES APOARD THIS VIJBEL SHOULD HAVE SEEN STANDING HIGHT (\$) HOUR MATCHESI!!!! No other method will suffice IN ORDER TO COMPLY WITH THE AGREED UPON BOAT SCHEDULE, as per MEBA Agreement. The 1st A/Engr. BUST be incl. in the DAY-WATCH, REGARDLESS OF THE DAY! Any other method is CONTRARY TO THE AGREEMENT! See hr. Lamy's letter 3/13/72.

# BREAKING MATCHES IN PORT - (fifth page of your letter)

See preceding paragraphs under IMPROPER ROTATION OF MATCHES.

The S/S American Eagle Violated Section 10. Hours of Labor In Port of our 1969-1972 Tanker Agreement, in that "Hight (8) hours shall constitute a day's work". Not only BOTH 3rd A/Engrs., but also the 1st A/Engr., Paul SERIOUSLY VIOLATED this section of our Agreement.

Therefore- when I ADAMANTLY DEWANDED "that we ALL stand eight (\$) hour watches in port (Because neither 3rd, nor the 1st A/Engr. would agree to ROTATE the night watches), then the MEBA Agreement was Violated when they all refused my LAWTUL DEMANDS!"

Then the ARSA Contract is Violated by EVERY OTHER ANGINEER ABOARD THE VESSEL, EXCEPT IN, I am not REQUIRED to participate in said "ROTATION OF ANY DAY-WATCH", and an perfectly within my rights TO DEMAND SAID MIGHT (8) hour port watches, the same of which I was WILFULLY, ARBITRARILY and MALICIOUSLY denied!!!

All changes in watches aboard this vessel were at the MILFUL and ARBITRARY DEMAND of both 3rd A/Engrs., with the chief engrs. CONSENT, BUT WITHOUT MY CONSENT I am not counting the two (2) occassions a watch was stood for me, because the FIRST ONE on 1/19/72 was REQUIRED of me to SIGN-ON the vessel in Yokohama, and the SEGOND CHE on 1/20/72 in Hamble, Eng. was STRICTLY UNION BUSINESS, and I paid \$20 for this privledge out of my own pocket. See page #4 herein, at bottom of same.

What kind of a system is it where I am FORCED to pay to have a three (3) hr. watch stood for me to take care of UNION AMB/OR SHIP'S BUSINESS, when this three (3) particular hours is OVER AND ABOVE any and all hours of EITHER of the engrs. who are standing said watch for me. Then to really BREAK IT OFF IN ME, I AM FORCED TO DIVIDE MY THREE (3) HOURS OF OVERTIME, WHICH I STAND OVER AND ABOVE THESE CAME TWO EMERS. FOR EVERY SINGLE DAY THAT WE ARE IN PORT. In otherwords its alright for both 3rd A/Engrs. to work GNLY & hrs. a day in port and to pay them overtime for all hours they work IN EXCESS OF & hrs., While I have to work eight (8) hours, or more before I start making overtime in port!!!

# 224

# Defendant's Exhibit N

. . . . T. Gilbert

PAGE NO. É

November 27, 1972

RESULTING YOUR ALLEGATIONS- That Natches Don't Have To Be Broken As Per June 16, 1972 MEBA Tanker Agreement. (page 5, yours)

Read ALL of page #7 herein ...

Night watches in port shall be arranged in approximately eight (2) hour periods in TACH successive port. Furthermore-ALL engineers involved in night vatches NUST agree to any method of watch rotation. If no agreement is attained, then ALL engineers involved MUST STAND BIGHT (3) HOURS MACH, which means three (3) EIGHT (5) HOUR FOUT MATCHES for each and every day in port, as per "Section 10. Hours of Labor In Port", page 27 of the 1969-1972 Tanker Agreement. Ho other method will suffice, UNLASS sea-watches are maintained FOR ALL THALE TATCHESTANDERS such as One 3rd A/Engr. stands 0000-0500 and 1200-1600 watches; Other 3rd A/E stands 0000-1200 and 2000-2400 watches; And 2nd A/ENGR. stands 0500-0500 and 1600-2000. I STEL ACCEPT NO OTHER MAY OF MAINTAILING SEA-MATCHES!!!

I was FORCED to stand watches in port CONTRARY to my demands and AGALHST my will and ETTHOUT my consent! This is \$7.30 against MEBA Rules and Regulations!

I know that I only stood a watch from 1700 to 2000 each day in port. However no launch schedule was ever set up for the 2nd A/angr., who on this ship was RE-QUITED to go on watch at 5 Pd in port. The 2nd A/Angr. was FORCED to take the DEGULAR LAUCCI, which was set-up for ALL vessel personnel who WERG COULDED to be on watch at 1 R.. his 2nd A/Angr. was the CPLE crew member absord the vessel was was TIQUIRED to be on watch at 5 PM. This very fact alone caused said 2nd A/Angr. to be INVIEW one (1) hour less SHOME LIBURTY every single day the vessel was in port than ANY OTHER HAN ABUAND:::

Eules & Regulations Since 1959. (your letter pages 5,6

See ALL of pages 6, 7 and 2 of this letter.

As to Ar. Lawy's letter of March 13, 1972- I, Ar. J. T. Gilbert am the one who wrote that letter (My letters of Feb. 7,2 of 1972) to Mr. Lamy, who's answer to my letter FINALLY FORTS let A/Ongr., J. Faul to stand a MARK-NWO day-watch. This manner that the S/S American Dayle (AS BEEN VIOLATING TW. MARK WONTING AGENT-MARK STUGE 1959- In regards to the fact the let A/ongr. MOT stand day-matches TOO on ALL MARK-MARK OLD ANALYMST I've pointed out in this letter to date!!!

That Conditions Of The Agreement Mave Not Been Violate In Regards To Hr. Gilbert. (your letter page %)

A reading over of this ETTER letter VOL PROVE beyond a reasonable doubt, that I VEAL conditions of the DEBA Tanker Agreement have been VINFILLY, METORLY, ACCUPACITY and HALICIOUSLY VICLATED against said MEBA Lember, Fig. J.T. Gilbert!!

TURNITITIE YOU FROMEN OF 76.11 YOU CLAIM CO. OWS NO- (Lest page of your letter)

- TYCH TOTA CLAIM I am demanding the sum of \$4.97.34, under Items 1 to \$12 of Mr. Colog's letter of Sept. 5, 1972 2497.34
- COMPINE CHAIM I am demanding the sum of "84.60 for a total of 20 hrs. 1.23, as per page 10 of hr. Colon's letter of Sept. 5th 34.60
- 3. UNIOR DISPUTED OVERTILE CLAIM:
  - (a) WICESS & W.S. LEAVING FORT- Fage No 6, my letter. 1/20/72 Yo'cosu'ca 1600-2000 4 hrs @ 00.49 - 37.96
  - (b) PRIAYED SAILING Page No 6, my letter. 3/17/72 Bahrain Friday 2000-0100 5 hrs @ 04.23 - 3 21.15 :61.1.05

Total MATCH HOUR, CONFINENCE and DISPUTED O.T. CLAIM

John J. Dillat

225 Defendant's Exhibit N T. F. Oilbort 1994 Fishrich To. 1 752 Broadway "on York City, I.Y. Captain T. V. Innshall Town ibar 27, 1972 American Lagla Can'ter Corp. 80 Promi St. New York, T.Y. 1990k EDDARDS: SUPELLIST OF LUTTUE OF ELBUTTAL FACES 1 TO 2 A COTIVILY. Dear Sir: PEGARDS DELAY IN BRING THIS CVERTILE TO A TEAD: lost of this overtime was caused by IMPROPES ROTATION OF MICHES and UNIQUAL DIVISION OF MATCHES. The to the fact that 3rd A/Sngr., Oliferovitch ADAMANDIN DIMARROW (With Chief Engr., Fr. Colonar's permission) to keep track of ALL DOUG ATCH OWNETHER, this fact resulted in ALL of said port watch overtime being COMPLETELY FOULD-UP: Therefore-because I 'M3 NOT responsible for even keeping track of my own port match overtime, but same was delegated to the whims and fencies of Chief Engi Coleman, and due to the fact that ALL of this overtime 'M3 turned in by me on the evening of April 20, 1972, in the port of Hamble, Eng. - NO SOLID MONTH TIPORT I not off of said vessel, I am hereby declaring myself to be COMPLITALY UNCOUNT of any claim, charges, enc., Chargesver in THE DELAY in my enceiving this eventile of 1641.05. ALL of this delay MAS because of the MILFUL, ARBITRARY AND MITTIOUT SHOTIPI-ARLE CAUSE-ERLAY BY THE COMPANY: REGARDS COMMENULARY TO VESSEL - UNEQUAL DIVISION OF MATCHES, & FAILURE TO ROTATE: I have already COMPLETELY described the INCOMPLETED fact, that sea-watches MERI NOT maintained abound the S/S American Dagle for ALL angineers, while I was abound said vessel. These facts are pointed out specifically, on PAGE NO 1, Items 1) and 2), and on PAGE NO 3, Item #2, last paragraph of my INTER OF LEGUTE In the 1989-1972 Tanker Agreement, under <u>Dection 17. Confinement To Vassel</u>, it specifically points out on page <u>42</u> of said <u>Agreement that Then as gineers are entitled to shore leave and denied same FOR ANY REASON except as provided below (There prohibited by local law), or then launch service is not provided as REQUIND by this agreement, premiur pay shall be paid FOR ALL HOURS WHILE OFF MATCH".</u> So- because of the fact that BOTH 3rd A/Engrs. only worked CUE (1) four (4) hour watch, for every three (3) out of four (4) days in port-this acrangement Violates Section 10. Jours of Labor In Port of our HEDA Tanker Agreement, in that BIGHT (3) hours chall constitute a BANTS JORGE I know that I only worked seven (7) hours a day in port, namely 0400-0500 and 1700-2000, but this was RYCHICED of me, and was done ITHOUT MY CONSENT, and with EATHS E measures taken by me in trying to BOCTIFY this matter- See my lotters I sent to MEBA- Letters of 2/7,8/72, 1/20/72 from vessel, and my lotter I sent from Japan on June 1, 1972: I demanded that IF they want to stand SEA-MATCHES IN FORT, then we ALL stand two (2) four (6 hour vatches in port EACT day, PLUS, the 1st A/Engr. ALSO works EVERY day in port from 0000-1700, Hon. to Fri. inclusive, while ALL watchstanding engineers work their BESULAR sca-watches of two (2) four hour watches on ALL Sat., Sun. and Holidays in port!!! days in port!!! The explanation in the preceding paragraph is the only way of describing STANDING SEA-MATCHES IN PORT- no other explanation can be accepted! Also-because sea-watches were stood in port by the 2nd A/Dayr. ONLY, a Violation of the HEBA Contract occurred, as mentioned, then THE should said 2nd A/S be FCCCOD to still abide by the HEBA Contract, in the matter of having to stand a DAY-HEOT in port, ACATHST HIS WILL, TITHOUT HIS CONSULT and AGAIHST HIS BETTER JUDGET SYT, which caused him to be FORCED to initiate every conceivable measure in order to try and RESTIFY the matter, which includes even right up to this very minute that I am pounding out my RESULTAD to the causes of my misfortune herein! Dince I bearded the S/S American Eagle on 12/22/71, until today Nov. 27, 1972- I have been FORCED to spend approximately 1,000 hours of my time! My time is worth a lot more to me than any \$4,23 per hour, and beings our Tanter Agreement overtim

226 Defendant's Exhibit N Covember 27, 1972 ir. Larghall rate for 20th A/more, on 25,001 to 32,000 Fover Tempore Vessels calls for 59.49 and hour up to dure 15, 1972, and 10.07 as hour AVIII June 15, 1972, I have no other alternative, but to use the higher figure of 10.07 per hour for the similar time this overtime issue along has cost me in LOST TILE, nearly 1,000 hours et 10.07 per hour, which rives a net total due is of 110,000 for the TILEUL, ARBITRARY, THE OUT PROTECTION OF MY LIMIT AND CAUSING HE TO SELECT THE ARBITRARY, THE Select TEMPORARY CAUSE AND LIMITED TO MY TILE and 1,000 hours of my LIMITED THE TAKE AND LIMITED THAT INVIDENTIAL AND THE ARBITRARY THAT I TAKE AND HARDO BOWN THAT I THAT MAY CAUSE BY THAT I AND THE ARBOTTOM TO BE TO ARTICALLY AND COUNTY THAT I THAT MY CAUSE AND THAT AND THE ARBOTTOM TO BE TO ARTICALLY AND COUNTY THAT I THAT I AND THE ARBOTTOM THAT I ARRIVED TO BE TO THAT THAT I AND THE ARBOTTOM THAT I ARRIVED THAT I ARRIVED TO BE TO THAT THAT I ARRIVED THE ARRIVED THAT I ARRIVED THAT I ARRIVED THE ARRIVED THAT I ARRIVED THE ARRIVED THAT I ARRIVED THE ARRIVED THAT I ARRIVED THAT I ARRIVED THE ARRIVED THE ARRIVED THE ARRIVED THE ARRIVED THE ARRIVED THAT I ARRIVED THE ARRIVED T Therefore- I went STRICTLY by our 1969-1972 Tanker Agreement, under Section 17. Confinement To Vessel, and specifically to the clause "there engineers are antitled to shore leave and denied same FOR ANY REASON they shall be paid FOR ALL TIME CRY VATOR". And in the part that says "ALL HOURS OFF LATOR", I am strictly emphasizing maily one word- ALL. Therefore according to our 1969-1972 Tanker Agreement, I am DEMINDING overtime for ALL hours off watch for EVERY day we were in port while I was aboard the wessel, and I have ALEMANY turned this overtime in- OUR SOLID HOURY BUFORE I "AS possible of the Viscot, AMAINOT MY WILL, STROUT BY COUSTIT AND "U TEL MOTATT":!! Thy should I halv be paid as boun have and four hours there for Violations Of Contract, the medical Profite and To Vessel says "FOR ANY READON", and for "ALL HOURS OFF MATORY? Section 17. and Section 10. Hours of Labor In Port were Violated in port against 32, for MARY SUBMETARY IN FORT that I was about this vessel: Furthermore-Section 35. No Discrimination of the 1969-1972 Tanker Contract was ALCO Violated for preceding reasons, dainly that "MUTTLUX MARRY STALL PRACTICE MY DESCRIPT ATTOUR AGAINST THE OFFIR OF AGAINST OR BY ANY LICENSUD AMGINEER". Is I wasn't DISCRIMINATED ACAIMST abound this vescel, because of the preceding combination-them you might as well throw this agreement in the ash-can, and Tebsterts Dictionary with it!!! And this, gentlemen, was only PART of my troubles I has while I was abound the vessel... I repeat from the vessel Violater the NEBA Appearent, and ALSO MISCRIMINATION APARTOR IN- then I NO LONGER AN BOWN to that particular part of said Vorking Agreement that MAS rainly Violated against do, and namely Section 10. Mours of Labor In Fort, and more specifically, paragraph (c) of this section, in that I am WHOT SAULTED TO STAND A DAY-MATCH BECAUSE OF SAID VIOLATION !!! CROADS VIOLATION OF MEBA CONTRACT- Endangering Life, Health, Safety And Welfare: Bacquae of all of said Violations listed here in this letter, and in my harrow of PEBUTAL- "Section 2. Grievance Procedure And Arbitration, paragraph (1)"- was Abbe Violated against me. other two vatchstanders, which resulted in my MEVER having more than EIGHT (3) HOLDS OFF DUTY, SOURT (7) HAYS A WEST, BOTH AT SOA AND IN FORT- ADARGED MY CALCELATO SAFE WILL BOTH 3rd A/Engrs. had 20 hrs. OFF-BUTY each and every day in port, and the let A/Engr. DITHIT WORK AT ALL- for every three (3) out of four (4) days in port!! This very fact STRIBURY JODFAHUZED my LIFE, HEALTH and SAFETY, as follows: More hours each day in port than either one of the other two watchstanders. Reason- many disasters happen in port will loading and discharging carso, namely and control of the other two watchstanders. Reason- many disasters happen in port will loading and discharging carso, namely and countries. Forking this DKTRA three (3) hrs. puts me in AFFROCHARTELY WORLD OF ALL "night watches" in port, while each 3rd A/lagr. worked only 1/15 of the "night watches" in port, while each 3rd A/lagr. worked only 1/15 of the "night watches" between 5 PM and 2 AV, each day in port. Many Tanker explosions, fires, ships breaking-in-two, etc., occurs MACH YEAR, while Tankers lay in port all over the world.

227 Defendant's Exhibit N Tir. Marshall

. T. Gilbort "ovember 27, 1072

Second- My MPATY was jeopardized, because I was LACUTED to mark three (3) MOPE hours LACT day in part, than ETTEL one of the other two watch standers, and for the SACO masons as listed in the preceding paragraph.

Third- My WAALTH was jappardized, because I was REQUIRED to work three (3) MORN hours in port each day than SITHIC one of the other two watch-standers, because I YAWA had more than SIGHI (8) hours off-duty in port, or at sea, while BOTH 3rd A/Darms, had twenty (20) STHATHT MORS ONE-MITY IN WARN PORT, which fact wave them PIVITY of time to MAST-UP, SIMME, TC., the same of which I MAVIM obtained!!! I've not OFFICIAL FAFEYS TO PROVE that I MORNED this MITHA time-off in port, TO ROST (For health reasons), and this is ONE DE THE MAIN WARDING I had for MATCHES BY STOOD IT WARY FOR BY ALL MITHATCH-STANDING MICHIGAN, and I DELLAMBED this from the very first day I arrived aboard the C/S American Eagle, and VOCITHOUSELY FORCES BY STOOD IT WARY FOR BY ALL MICH the very day I was MALICIOUSLY FORCES OF THE VESSUE, MITHOUT BY CONSETT and also ressimist, cry-baby, etc., but just in ordinary fellow who is not just complaining about VARIOUS VIOLATIOUS OF OTH LEGA CONTRACT, BUT TRY IN THE TIES SOULD MATCHES OF ALL so that IT OF THATPEN AGAINING TO ASCRIFY THIS SOULD MATCHES OF ALL so that IT OF THATPEN AGAINING TO ASCRIFY THIS SOULD MATCHES OF ALL SO that IT OF THATPEN AGAINING THE ABOARD THE WASSEL I MICHT BY CONSETT AND ALL OF THE EAST OF THE MATCHES OF THE WASSEL I MICHT BY CONSET IN THE PROPERTY AS ALL OF THE EAST OF THE MATCHES ABOARD THE WASSEL I MICHT BY COLUMN AS ALL OF THE EAST OF THE SAME MORNING BEING THE WASSEL I MICHT BY COLUMN AS AND THE PROPERTY AS ALL OF THE EAST OF THE SAME MORNING BEING THE WASSEL I MICHT BY COLUMN AS AND THE PROPERTY AS ALL OF THE EAST OF THE SAME MORNING BEING THE WASSEL I MICHT BY VESSUE THAT FLOATS!!!

To view of all of the preceding material in THIS letter, and in all the material in my LETTLA OF RESULVAL- I see nothing wrong with the demands that I have made to date. I pay the SALE Union Dues as ALL OTHER MESA MESERS, and shall I WOUTER is the SALE treatment as ALL OTHER EMGINEERS RECEIVE aboard ANY 2117 50 vessel I might be on.

As a final conclusion- in ALL of the approximately 27 years I have belonged to the INRA, THAVE MEVER ran in to the DISCRIMINATORY practice as I encountered aboard the 3/3 American Eagle, and I don't aim to run in to such again....

Very truly yours

John T. Gilbert

cc/MINA Tir.

#### DECISION OF METZNER, J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JS FILED OUR; APR 1, 1975 S.D. JE N. Y.

JOHN THEODORE GILBERT,

Plaintiff,

-against-

73 Civ. 2227

AMERICAN EAGLE TANKER CORP.,

# 42140

Defendant.

METZNER, D. J.:

In this action plaintiff, a seaman, seeks to recover damages from defendant, the owner of the S.S.

American Eagle, for alleged breaches of law.

Defendant needed a relief man for Butler, the second assistant engineer on its vessel which was engaged in Middle East trade. It signed plaintiff in New York on December 21, 1971, to proceed to meet the vessel at Ras Tanura in Saudi Arabia. The employment was to continue until Butler's vacation time was up and he rejoined the vessel. Plaintiff boarded the vessel on December 29.

On May 18, 1972, plaintiff was given a voucher worksheet showing details of wages due, overtime, advances, etc. He was told that the regular assistant engineer was

Decision of Metzner, J.

returning on May 20 and his employment according to the agreement of hire would be over on that day. The voucher worksheet was supplied in advance so that he could check on the accuracy of the figures.

On the morning of May 20, he went to the Master's cabin to receive his pay and arrange to leave the vessel which at the time was at Ras Tanura. The master issued a certificate of discharge which indicated that plaintiff had completed his relief job and since a consular officer was not available, the payoff was made by the master.

The pay voucher indicated wages due of \$5,228.71, plus \$5,557.57 overtime. Plaintiff claimed an additional \$497.34 which was due for overtime, and insisted that he be taken to a consular officer for discharge. There was no such officer at Ras Tanura. In addition, the master pointed out that pursuant to the union contract, the question of overtime was a matter to be settled between plaintiff's union representative and the defendant.

Plaintiff, pursuant to his request, was given \$2,000 in cash and a voucher for the balance due as shown on the wage sheet. He also received a first class air ticket back to New York by way of Paris.

Although plaintiff always signs on for jobs in New York, he lives in Yokohama, and he went there for several months before returning to New York. He then brought his grievances to the attention of the union.

These grievances included failure to pay the correct amount of overtime, failure to properly credit him with travel time to New York, improperly discharging him on May 20 because Butler had not returned to the vessel, failure to pay one month's wages as provided by 46 U.S.C. § 685, etc.

The union representative pressed plaintiff's claim for overtime through exchange of correspondence and several conferences. The claim was ultimately disposed of by the payment of \$76.14. Plaintiff was told to present to defendant the voucher he received from the master for the \$5,121.19 still due him. He claims he stayed in New York from July 1972 to May 1973 trying to get paid, but he never went to defendant's office with the voucher to collect his due. There was no failure on the part of defendant to pay wages so as to make it liable for the double payment provided by 46 U.S.C. § 596.

A 231
Decision of Metzner, J.

There was no violation of 46 U.S.C. § 685

requiring the master to take plaintiff to a consular

officer. That section was enacted to prevent an

unscrupulous master from stranding an unfortunate seaman

in some far off place. Plaintiff was not being discharged

improperly. His term of employment ceased according to

its terms. His grievance for overtime was adequately

covered by the collective bargaining agreement, a procedure

unknown at the time of the adoption of the section in 1840.

Plaintiff seeks to come within the section by claiming that because of standing uncalled-for watches which is the basis for the overtime claim, he was subject to cruel treatment. There is no basis for this claim.

Defendant consents to the payment of \$46.56 for failure to properly credit travel time and subsistence from Ras Tanura to New York.

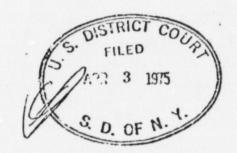
Judgment shall be entered accordingly.

So ordered.

Dated: New York, N. Y. March 31, 1975

U. S. D. J.

JUDGMENT



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JOHN THEODORE GILBERT

Plaintiff

-against-

AHERICAN EAGLE TANKER CORP.

Defendant

73 Civil 2227 (CMM)

JUDGMENT # 75,282

The issues in the above entitled action having been brought on regularly for trial before the Honorable Charles M. Metzner, United States District Judge, on December 5 and 6, 1974, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on April 1, 1,1,5, having handed down its opinion, directing that judgment be entered in favor of the plaintiff, on the consent of the defendant, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff JOHN THEODORE GILBERT have judgment against the defendant AMERICAN EAGLE TANKER CORP., in the amount of \$46.56.

Dated: New York, N.Y. April 3, 1975

Safrional D. Benglandt

A 233
NOTICE OF APPEAL

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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JOHN THEODORE GILBERT,

Plaintiff,

73 Civil 2227 (CMM)

-against-

NOTICE OF APPEAL

AMERICAN EAGLE TANKER CORP.,

SEAMAN'S ACTION

Defendant.

PLEASE TAKE NOTICE that plaintiff, JOHN THEODORE GILBERT, above named hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment in this action entered on the 3rd day of April, 1975.

DATED: New York, New York April 21, 1975

Yours, etc.,

TO:

DONALD D. OLMAN Attorney for Plaintiff 276 Fifth Avenue New York, New York 10001

CLERK, UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(212) 684-5620

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN Attorneys for Defendant 96 Fulton Street New York, New York 10038 FILE #86885 FOB/RJR

(212) 233-6171



of the within APDENDIX is hereby admitted this 2574 day of August 1975

Attorney Stor Affecta

COPY RECEIVED

AUG 29 1975

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN